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After his post office venture failed, Lysander Spooner returned to the family farm in Athol, where he took up the question of slavery. Anti-slavery sentiment was strong in the area; rural New England had few economic or social ties with the South. There had been an anti-slavery strain in Puritanism, and in the backcountry the Puritan religious animus (if not doctrine) had remained strong. As early as 1700, Joseph Sewall had written *The Selling of Joseph*, in opposition to slavery. The impact of the Revolution was likewise still strong. During the Revolution slavery had been

abolished in Massachusetts. The state supreme court ruled in 1783 that by declaring all men equal the preamble of the state constitution had made slavery illegal.

From such a background, it is not surprising that Spooner and his whole family became "ardent abolitionists." Too much of an individualist, Spooner never joined any particular organization. Instead, he undertook to attack slavery through legal arguments. He believed it was unnecessary to prove slavery wrong—most people already felt this—what was needed was a legal strategy to end the "peculiar institution." With the proper brief, he believed he could demonstrate the illegal basis of slavery and show that all property would be in jeopardy if property in man were continued.

In September, 1844, Spooner requested help from Gerrit Smith, the wealthy philanthropist and abolitionist living in upstate New York. Asking support to complete a work on the unconstitutionality of slavery, Spooner explained that he had for some years been collecting facts and arguments on the subject. "But several long absences in the West," he wrote, "combined with poverty, and a want of access to the necessary references, have thus far prevented the accomplishment of the design." As proof of his abilities, Spooner enclosed a copy of his *Unconstitutionality of the Law Relative to Banking, Currency, and Money* (1843), and asked for three months' living expenses for research in Boston. Smith responded immediately with money and encouragement.¹

To understand Smith's ready response we must understand the politics of the abolition movement. Boston and, in general, New England, were under the influence of William Lloyd Garrison, a man of vision and eloquence. Garrison, however, as a tactician was rigid, unready to stand for any compromises with evil. In 1840, he split from the New York and Mid-West abolitionists. They wanted to enter politics, nominate and elect candidates, and to use government as a vehicle for abolishing slavery. Garrison stuck to his ideal of moral suasion and wanted nothing to do with a government which embraced slavery and slaveholders. In a statement that quickly became notorious, Garrison declared the United States Constitution was a "covenant with death, an agreement with hell." He burnt a copy on the Boston Common.

Gerrit Smith must have been particularly pleased to receive an offer from Spooner to prove that the Constitution was not a pro-slavery document. Such a demonstration would strike at the heart of the Garrisonian position and provide justification for further political organization. The New York abolitionists were, moreover, eager to retain whatever ties they could with New Englanders.

¹ Lysander Spooner to Gerrit Smith, September 8, 1844. Spooner Papers, Boston Public Library.

Spooner himself belonged to a loosely organized group of non-Garrisonians in New England. They have been neglected because Garrisonians so often wrote the history of the abolition movement. The group included George Bradburn, a state legislator from Nantucket, and later a newspaper editor in Cleveland and in Lynn, Massachusetts. He was Spooner's lifelong and closest friend; (at Bradburn's funeral in 1880, Spooner read a eulogy and was a pallbearer). Richard Hildreth, historian and author of *The Slave: or Memoirs of Archy Moore* (1836), along with his wife accepted Spooner into their family circle. Nathaniel P. Rogers (1794–1846), editor of the New Hampshire *Herald of Freedom*, would undoubtedly have been more important had he lived longer.

These men shared a dislike for churches and clergymen. Rogers held a particularly notorious view. If the Bible supported slavery, he argued, the Bible would have to yield in favor of freedom. Spooner, of course, had contempt for the Bible, Christianity, and for religion in general. Hildreth with a Benthamite utilitarian and no friend of any church. At the 1840 World Anti-Slavery Convention, Bradburn had opposed "introducing any such words as 'Christian,' 'Religious,' and the like, by which persons of any religion whatever, or of no religion whatever, should be excluded from the Anti-Slavery platform."² Garrisonians also had anti-clerical tendencies, but more from antinomianism than from skepticism. Stephen Foster, for instance, a close associate of Garrison, had written a vitriolic attack on the clergy, *The Brotherhood of Thieves* (1843). But Spooner, Hildreth, and to a lesser degree the others, despised religion itself; they took their inspiration not from the Bible, Christianity, or even from brotherly love — but from the rationalism of the eighteenth century — a rationalism crystalized in the Declaration of Independence and in the United States Constitution.

That human beings are born with the inalienable quality of freedom underlies all of Spooner's arguments. For him "it is a self-evident truth that . . . all men are *naturally* and rightfully free." (p. 266) Nathaniel Rogers outlined the principle in *The Herald of Freedom* (September 8, 1838). "A man cannot be a subject of human ownership;" Rogers argued, "neither can he be the owner of humanity. There is a clear and eternal incompetency on both sides . . . A man cannot alienate his right to liberty and to himself, — still less can it be taken from him." (p. 15) Of course, men *can* be bound and imprisoned, but this does not make them non-human (that imprisonment may dehumanize a person is another question). A human, according to Rogers, "can't be property any more than he can be a horse, or a *literal* ass." Spooner too argued that "the principle of *natural law*, which makes a calf belong to the owner of the cow, does not make the child of a

² Frances Bradburn, *Memorial of George Bradburn* (Boston, 1883), 245.

slave belong to the owner of the slave . . . because both cow and calf are *naturally* subjects of property; while neither men nor children are *naturally* subjects of property.” (p. 129) There is a certain eternal, inalienable quality in being human; just by being born, a man is free.³

Few Southerners would object to such eighteenth century principles as natural law, freedom, individualism, equality, and democracy. Even today we often associate Fourth-of-July oratory with the South. What the Southerners would not admit was that slaves were human beings or persons; in their mind slaves were property like cattle. Indeed, they used all the principles of natural law and reason to defend their rights of property in men and women. In a letter to Spooner in 1851, Senator James Mason of Virginia argued that slavery “is a form of property (in the case of African slaves,) originating in Africa, and when brought into the colonies of North America simply recognized as property by the common law.” To defend owning human beings, Senator Mason thus used the same principles as Spooner, natural law, common law, and the generally accepted principles of justice.⁴

Although appealing to the Bible and to natural law, the Southerners’ most common defense for slavery was legal. Calhoun, Mason, and others, rested their defense of slavery on the United States Constitution and believed their case airtight. (Garrison and other abolitionists such as Wendell Phillips agreed.) In challenging the slaveowners’ interpretation of the Constitution, Spooner thus met the enemy on what was taken to be their strongest ground.

Spooner’s argument in the *Unconstitutionality of Slavery* rests on the logic and reason of abstract law and not on historical or sociological evidences. His method is thus the same as the Southerners, who had been trained in the same legal tradition (Blackstone mainly). “The Constitution itself,” according to Spooner, “is the same now that it was the moment it was adopted. It cannot have been altered by all the false interpretations that may have been put upon it.” (p. 218) John C. Calhoun could not have agreed more; his argument on the union recognized no changes in its character even though the number of states had more than doubled and the original thirteen were no longer a majority.

In a triumph of creative legal reason, Spooner followed John Marshall and Daniel Webster in arguing that the Constitution created a new citizenship — a national citizenship quite distinct from state citizenship. The idea was based largely on the preamble which used the words “We the people” instead of “We the states of the union.” Going beyond Webster and

³ Nathaniel P. Rogers, *A Collection from the Newspaper Writings of Nathaniel P. Rogers*, John Pierpont, ed. (Concord, N. H., 1847), 15, 129.

⁴ J. M. Mason to Lysander Spooner, February 24, 1851. Spooner Papers, Boston Public Library.

Marshall, Spooner argued that the phrase “people” included all men, women, and children, living in the country at the time (in 1789), and their posterity; within that group he included people with black skin. Chief Justice Taney specifically disposed of this argument in his decision in the *Dred Scott* case (1857); Taney ruled that a Negro had never been and could never become a citizen of the United States. Although historically false (Black citizens had participated in founding the United States government), *Dred Scott* became the law of the land until overruled by the Fourteenth Amendment, which begins: “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.”

Spooner’s second important argument is his application of the rights of citizenship to all persons. He is careful not to claim too much for the federal government, but he does insist that certain provisions and benefits of the Constitution apply to all people born within the United States. The poll tax, right of commerce, post office service, military protection, right to bear arms (self-defense), protection of contracts, eligibility to be President, trial by jury, and the privilege of habeus corpus — all are included in the Constitution. Moreover, the Constitution guarantees to each citizen a republican form of government. “A slave government,” Spooner argues, “is an oligarchy; and one too of the most arbitrary and criminal character.” (p. 106) Spooner’s view of the constitutional rights of citizens was also written into the Fourteenth Amendment which declared:

“No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

One corollary of Spooner’s argument did not become part of our law — the right of the people to resist an unconstitutional law. The right of the people to resist the usurpations of their government, Spooner wrote, “is a strictly *constitutional* right. And the exercise of the right is neither rebellion against the constitution, nor revolution — it is a maintenance of the constitution itself, by keeping the government within the constitution.” Who should judge whether a citizen in rebellion has behaved unconstitutionally? Spooner argued that only a jury of peers could decide such a question. The power of resistance should not be circumscribed because it was the people’s only real security.

“Nothing but the strength of the people, and a knowledge that they will forcibly resist any very gross transgression of the authority granted by them to their representatives, deters representatives from enriching themselves, and perpetuating their power, by plundering and enslaving the people.” (*Defence for Fugitive Slaves*, p. 30).

Assailed by usurpation — the Fugitive Slave Act (1850), the Kansas-Nebraska Act (1854), the *Dred Scott* decision (1857), and other government favors to slaveholders — the only recourse for the enslaved was resistance. In his first edition of the *Unconstitutionality of Slavery* (1845), Spooner defended the natural right of slaves to bear arms and “if from the inefficiencies of the laws, it should become necessary,” to use these arms “in defense of their own lives or liberties.” (p. 98) Moreover, Spooner had argued that those aggrieved in one state had a right to contract protection and alliance with friends in other states. “Such contracts for mutual succor and protection,” he wrote in 1845, “are as fit and proper as any other political contracts whatever; and are founded on precisely the same principle of combination for mutual defense” as the constitution itself. (*Unconstitutionality of Slavery*, p. 107)

In *Defence for Fugitive Slaves* (1850), Spooner argued that, “The rescue of a person, who is assaulted, or restrained of his liberty, without authority of law, is not only morally, but legally, a meritorious act;” everyone should “go to the assistance of one who is assailed by assassins, robbers, ravishers, kidnappers, or ruffians of any kind.” (p. 27) This right was legally recognized by the constitutional guarantee to bear and use arms.

In a broadside printed in 1858, Spooner spelled out how such a right could be exercised. First, groups should form in the North to send arms, aid, and even to fight in the South. Groups of Black citizens in the South should also “form themselves into bands, build forts in the forests, and there collect arms, stores, horses, everything that will enable them to sustain themselves, and carry on their warfare upon the Slaveholders.” Such guerrilla forces could (until the anti-slavery forces were strong enough for outright war) capture, strip and flog individual slaveowners, in front of their slaves in order to undermine the master’s authority. These forces, North as well as South, could live by robbing the slaveowners.

“The state of slavery is a state of war, in this case it is a *just* war, on the part of the negroes — a war for liberty, and recompense of injuries; and necessity justifies them in carrying it on by the only means their oppressors have left them. In war, the plunder of enemies is as legitimate as the killing of them; and stratagem is as legitimate as open force.”

The broadside (on one side was “A Plan for the Abolition of Slavery,” addressed largely to persons in the free states, and on the other side, “To the Non-Slaveholders of the South,” a call for alliance), was hastily withdrawn at John Brown’s request because it might forewarn Southerners. Since Brown wrote very little about his incursion into Virginia, Spooner’s broadside and writings on slavery offer an understandable and very possible context for events at Harper’s Ferry.

John Brown was certainly familiar with Spooner's work. Gerrit Smith, Spooner's benefactor, had been very close to Brown, supplying funds for his stays in Kansas and for the Harper's Ferry raid. Smith made a point of sending his friends copies of Spooner's *Unconstitutionality of Slavery*. John Brown and Spooner met in Boston shortly before Harper's Ferry. And although he was told little about the details of the raid beforehand, Spooner had confidence in its success and, after the raid, admired Brown as a model of just action.⁵

When John Brown failed and was imprisoned, Lysander Spooner made another proposal for a guerrilla action. He suggested the capture of Governor Henry Wise of Virginia, who could be held as a hostage for Brown's release. Spooner planned an attack by sea through the Chesapeake Bay and James River; this area was already a haven for runaway slaves, smugglers, and others outside the law. A group could reach Richmond, the state capital, and kidnap the governor on his evening walk; once out to sea, they would be relatively safe. John LeBarnes wrote Thomas Wentworth Higginson, November 15, 1859, "L[ysander] S[pooner] called upon me yesterday. His idea has certainly the merit of *audacity*."⁶

In those desperate times, Higginson and Barnes actually found a boat and crew, but lack of money stalled their plans. Anti-slavery men of wealth were not willing to donate ten or fifteen thousand dollars for such a risky scheme. Those most favorable to Brown were expecting warrants for their arrest any moment; some fled to Canada, others repudiated Brown; Gerrit Smith had a breakdown. To moderate abolitionists, the immediate effect of Brown's action was shocking; his raid suited neither the politicians nor the Garrisonian non-resistors. To most abolitionists, Brown was better a dead martyr than a living menace. Even if money had been forthcoming, Higginson pointed out that the boat's captain and crew were mercenaries and could "make twice as much money by betraying" as by serving Brown's friends.⁷ Spooner's idea, along with similar projects in Ohio and New York, failed to materialize. Although rumors of these expeditions alarmed Virginians, John Brown was hanged without incident on December 2, 1859.

In heartily approving Brown's methods, Spooner separated himself dramatically from the Garrisonians who called for moral suasion. His judgment of politicians, however, remained consistent: politicians were only self-serving thieves. Spooner no more than John Brown expected justice through legal channels.

⁵ Lysander Spooner to O. B. Frothingham, February 26, 1878. Spooner Papers, Boston Public Library.

⁶ John LeBarnes to Thomas Wentworth Higginson, November 15, 1859. Higginson Papers, Boston Public Library.

⁷ Thomas Wentworth Higginson to Lysander Spooner, November 28, 1859. Spooner Papers, Boston Public Library.

There were several parties dedicated to anti-slavery action. The Liberty Party entered the elections of 1840 and 1844 with presidential candidates. In 1845, Spooner tried to get the Liberty Party's name changed to "Constitutionalist" in support of his own theories, but failed. In 1847, he wrote that he could not belong to the Liberty Party "until it comes up to my principles," i.e. "founding government on natural law." (December 5, 1847) For the Liberty Party's successor, the Free Soil Party, founded in 1848, Spooner had even greater contempt. "Its ideas," he wrote, "are all fogyish, and tame, and cowardly. It is led by a few old stereotypes, or rather fossilized Whigs . . ." ⁸ Spooner's scorn seemed to accelerate as the political power of the anti-slavery politicians grew. The Republicans, organized in 1845, drew his wrath in an 1860 pamphlet, *Address of the Free Constitutionals to the People of the United States*. "The Republicans," he wrote "are double-faced, double-tongued, hypocritical, and inconsistent to the last degree." (p. 41) They opposed slavery only outside the United States where it did not exist and where, Spooner argued, we had no control; within the United States, where we had jurisdiction, they supported slavery wherever established. The election of 1860 was thus "a mere contest of hypocrisy, rhetoric, and fustian and a selfish struggle for the honors and spoils of office." (p. 42)

From the Garrisonian viewpoint, Wendell Phillips had attacked Spooner's arguments in an 1847 pamphlet, *Review of Lysander Spooner's Essay "The Unconstitutionality of Slavery."* Phillips argued that, "Mr. Spooner's idea is practical no-governmentism. It leaves every one to do what is right in his own eyes." (p. 10) Thomas Earle, Liberty Party vice-presidential candidate in 1840, also responded: "Force or numbers must," he wrote, "of necessity, be the ultimate law giver, and I think it would be far from an improvement to permit the supreme court to make the law in conformity to its own view of justice . . ." One must choose between force or numbers, or "society would collapse at once into anarchy." ⁹ Phillips believed in the power of moral suasion and non-resistance to drive power and numbers into shame. Thomas Earle believed one should obtain power through numbers by being elected to office. Both men, consequently, believed that political power would be the final means of abolishing slavery.

In contrast to these men, Spooner's position is all the more striking. He believed no laws on the subject of slavery were necessary, because legislatures had no control over the subject. Men were by nature free; if we say Congress can make slavery illegal, we must accept a corollary that they can

⁸ Lysander Spooner to George Bradburn, December 5, 1847, and April 19, 1854. Spooner Papers, New York Historical Society.

⁹ Thomas Earle to George Bradburn, April 12, 1846. Spooner Papers, New York Historical Society.

also make slavery legal. "Congress," Spooner argued, "have no such power." (*Unconstitutionality of Slavery*, p. 275)

Slavery, as most injustice, had originated in human laws. The laws of men generally tended to obscure and confuse natural law, which by itself was able to settle most legal questions. With the exception of some regulations, "The whole object of legislation," said Spooner, "is to overturn natural law, and substitute for it the arbitrary will of power;" in other words, "to destroy men's rights." (*Ibid.*, p. 142) To suppose government impractical under natural law (as Phillips and Earle do) is, according to Spooner, to assume "first, that government must be sustained whether it administers justice or injustice; and, second, that its commands must be called law, whether they really are law or not." (*Ibid.*, p. 144)

Edicts of kings, votes of legislatures, or even the vote of all the people in the world could not establish natural law. Justice could be reached only through reason. Most men erred in their reasoning because they were encumbered by selfish or limited interests. Being free of encumbrances, Spooner believed he had reached the truth. Having mastered the natural law, he vowed to advocate it whenever or wherever he could find an audience, because natural law should rule all men in or out of office.¹⁰

Although he believed the principles of natural law were simple, clear, and comprehensible, Spooner shared something of the lawyer's prejudice against laymen. Various campaigns were undertaken to send copies of the *Unconstitutionality of Slavery* to all congressmen and eventually to all lawyers. And in a moment of despair, Spooner wrote in 1857, "The idea of going to the people at large on this question seems to me utterly futile. The mass of them have neither time nor inclination for such investigations . . ." Nonetheless he believed that although not industrious and well-informed, these masses once convinced of justice "would march up to the cannon's mouth in defense of the principles of my argument, if the lawyers all told them they were sound . . ." ¹¹

Spooner's 1857 prediction was uncannily sound; superficially at least, one million men died because their lawyers disagreed on the interpretation of the Constitution. The Civil War, however, never aroused Spooner's enthusiasm as John Brown's adventure had. He felt the war was fought on the false issue of union; it should have been fought squarely on the issue of slavery. In 1864, he published an analysis of the war in *Letter to Charles Sumner*. Spooner argued that:

"the slaveholders would never have dared, in the face of the world, to attempt to

¹⁰ Lysander Spooner to George Bradburn, December 5, 1847. Spooner Papers, New York Historical Society.

¹¹ Lysander Spooner to Gerrit Smith, September 10, 1857. Spooner Papers, New York Historical Society.

overthrow a government that gave freedom to all, for the sake of establishing in its place one that should make slaves of those who, by the existing constitution, were free." (pp. 2–3)

By defending their own freedom, rather than slavery, Southerners gained a great psychological and moral advantage that carried them through four years of war. In agreeing that the Constitution protected slavery, and by proposing compromises in 1861 to prevent succession, Sumner and others only weakened the moral position of the North. Against the Northern politicians, generally, Spooner charged that "upon your heads, more even, if possible, than upon the slaveholders themselves, (who have acted only in accordance with their associations, interests, and avowed principles as slaveholders) rests the blood of this horrible, unnecessary, and therefore guilty, war." (*Letter to Sumner*, p. 3)