48 Beekman Street

New York, Jan 9th; 1854

Lysander Spooner, Esq.

Dear Sir –I trust you will have recd my hasty note of 3d inst. – I sieze [sic] every spare moment, amid the constant interruptions of business, to make some further answer to yours of the 1st[?] inst. –Let me dispose of some of the minor points first. ___

1. In respect to what I said to you at Boston, I think it was a little different from your understanding and remembrance of it, though doubtless your remembrance of it is as you have stated it. You think I said that (your) "book was more of the nature of an argument and mine of an appeal." I well remember the interview. I think I must have said that yours was more of the nature and form of a legal argument, addressed to the Court ~~and~~ or (Judges) rather than to the jury, - That my argument was more in the Style and Spirit of an earnest appeal to the people" (ie) not only to the jurors but to the voters. –Mine was more (ie. more than yours) an instrument of popular agitation. Yours was less adapted to political agitation, but would be better than mine to read before a bench of Judges. –You were looking to the establishing of an individual Slave's Claim to freedom, but on a basis which would answer for every slave. –I was looking to a political revolution for the legislative overthrow of the Slave System.

Something like this was and is my comparative estimate of the two books – an estimate held, I know, by many of our mutual friends. –You must consider that I law claim so some powers of "argument" (which my book, on its face – in which I have been countenanced by perhaps extravagant compliments to my "logical" abilities. So, you see, I should not be likely to be quite so modest as to give up all my claim to an "argument" (which my book, on its face, claims to be) or to admit that I had only made a mere "appeal."

The distinction I have here described is entirely consistent with the statement that there was a remarkable coincidence in our own Sentiments, out facts, and our "ideas", as well as in our ultimate object, the overthrow of Slavery by showing it to be unconstitutional and illegal.

2. I, therefore, am prepared to appreciate and respond to your remark that "there are doubtless some co-incidences, of both fact and idea, but I apprehend none which two men, writing on the same

side of the same subject would be likely to fall into, without any borrowing from each other." As you say this in respect to the relation between your book and mine; I have onlu to ask, (what you will admit to be reasonable) that the same liberal principle should apply to the relation between my Letters and Your book. And there will be a marked propriety in thes, because

3. When my entire works of 1844 was completed and published – whereas only "a large portion of (yours) was written before (you) saw (mine)" –a frank statement "which struck me as having much of candor and much of truth." –I will now give you my view of the rise and progress of the Constitutional question, including my own and your paticipancy[?] in the discussion.

The AntiSlavery Declaration at Philadelphia, in 1833, drawn up by W Garrison at the organization of the ___ AntiSlavery Society contained the Usual concessions of the Compromises of the Constitution &c. Some few of us, in conversation, questioned the soundness of those views at the time, but were not prepared to debate the matter, and so it was siffered to pass, none[?] con. But it was not long before the matter began to be freely canvasses among abolitionists. Two articles on the subject appeared in the AntiSlavery Quarterly, edition by E. Wright Jr. in 1835 or 6.[?] _One was written by Samual J. May, and the other by the late N.P. Rodgers Esq. of New Hampshire. Both of them took the ground that the Constitution was an Anti slavery and not a pro-slavery document. The article of Mr Rodgers was quite definite and quite thorough. In his particular terse and petty style he indicated the sharp outlines of a rapid and startling argument in ___of of his positions. Some time after his decease and after the appearance (I think) of my work and yours, W^{m} L Chaplin Esq. in an Editorial article said of M^{r} Rodgers that this argument ~~of W. Rodg~~ in the Quarterly was a brief outline of all the arguments on that side of the question that had since appeared. I remember looking up the article and saying that W. Chaplin's assessment[?] of it was very nearly correct. Almost every conceivable view of the subject was hinted at, by question, or otherwise, though little or nothing was expanded and carried out, in detail, as you or I would have thought necessary to do. –But it put abolitionists on the right track. The discussion went on in the papers and conventions of abolitionists particularly in the State of New York. An unknown correspondent of the N.Y. Emancipation affirmed and ably vindicated the ____ of the Federal Government over the whole subject. John Quincy Adams, in Congress, affirmed the dame in the contingency of war, as a means of defence. Facts and argument and ideas accumulated rapidly in favor of these views. From 1836 to 1844 our Lecturers in Central Western N.York were constantly harking upon it, either between abolitionists themselves, or betweem abolitionists and their opposers. Such men as Myron Holly, Alvan[?] Steward, Beriah[?] Green, (and Gerrit Smith to some extent) favored the new views. Alvan Stewart presented his elaborate argument in

writing before the Ex. Com. Of the N.Y. State ASSoc. at Utica in Sept. 1827. It was presented & discussed in the Annual Meeting there the same month. By that meeting it was ordered to be printed and presented at the Annual Meeting of the American ASSoc. at N.Y. in May 1838. –It was printed, & presented at N.York by A Steward. This caused ~~al~~ any[?] excited debate at that Meeting between himself and Judge Jay, which <u>was continued</u> by editors & correspondents in the papers, afterwards. The printed argument was chiefly founded on the Amendment of the Constitution securing liberty by "<u>due process of law</u>" which, in its connexion, was elaborately explained. The <u>discussion</u> of it, opened a still wider field. M^{r}. Stewart and others introduced ~~arguments~~ other and various arguments against the legality and Constitutionality of Slavery. Public debates of 3 or 4 successive days and evenings were held, in Court houses & elsewhere, in which able lawyers contested both sides of the question. Not a corner of the subject seemed unscrutinized, not a stone left unturned. It would be strange if it could have been otherwise. For, from 1838 to 1844 and afterwards, (up to the absorption of the Livery party by the Free Soil party) no public question in <u>this</u> State excited <u>equal</u> attention or equal feeling. It was seen & felt to be the burning print[?] of the slave controversy. As an Editor and Lecturer and speaker at public Conventions, I, myself, took an earnest part in these debates, from an early period. From 1838 to 1844. I must have argued the question in public, some hundreds of times, and often with able lawyers. I remember one lecturing tour of two months, in which I spoke on the subject as often as six times a week, or nearly fifty times in all. I carried with me Stroud's Sketch of Slave laws, and an old book Containing the Declaration of Independence, Articles of Confederation, Federal Constitution, and <u>Several State Constitutions</u>, from <u>all</u> of which I was in the habit of ~~using~~ arguing the illegality and unconstitutionality of Slavery – meeditng all the pretended compromises & guaranties of slavery as I did in my book afterwards. I also made free use of Clarkson's History, and Stuarts life of Sharp, unfolding the illegality of the Slave Trade and of Slavery in England, &c &c. –In many a public meeting after a protracted debate, a majority of a promiscuous audience voted on my side, and the best lawyers on the others side owned[?] themselves vanquished. –It was on this account I suppose I in 1842-3 I was earnestly urged to write out for publication, in book or pamphlet form, a condensed synopsis of the argument. At length O set about it, and amid other arduous labors, collected together the materials & prepared the book, which, after an unaccountable delay of the printers or binders appeared some time in 1844, –In taking out a Copy right for this book, I had no idea that I could make private property either if its <u>facts</u> or its "<u>ideas</u>" – the most of which had been common property for a number of years. I only supposed I secured the exclusive right of publishing <u>the book</u> as I wrote it <u>& large portions of it</u>. I did not dream of monopolizing the facts of <u>history</u> or of <u>law</u>, or the right of drawing rational <u>inferences</u> from them. –If I <u>had</u> taken that view, I know of

no one who has since written on the subject that I should not have deemed a trespasser on my rights. This will be apparent on examination.

Another think I should say, just here. I writing my book, I did not attempt to collect any present all the facts, or all the "ideas" and arguments I had been accustomed to use, or to hear used by others in discussing the question. To have attempted this would have been to swell my book to an unreasonable size, ti mar the unity or perplex the plan of my argument, or retain some things that would not be well understood, or which some might seem questionable, or which I might myself think of minor importance. My cause, therefore was to select from among the facts and ideas familiar to me or at hand before me, such only as I thought best, on the whole, to introduce, leaving the balance to be used or not used, afterwards as might be thought advisable. –So that it is not to be taken for granted that all such additional facts and ideal as others may have presented, after I published, were therefore and unknown to me when I wrote, and that I have not the dame right to use them now that I had in 1844, and that others had years before. –Ine instance, at this moment occurs to me, and will illustrate my meaning. –The exposition you make in you works, of the words "free" and "freement" when used in our public documents I do not remember to have introduced into my work. But I suppose I should be safe in saying that I had heard Alvan Stewart make, substantially, the same exposition, twenty times, before I wrote and consequently before I had ever known any thing of you or your views on the subject. I might name other instances – and they are easily included and explained under your own remark that such coincidences are likely to occur, when "two men write on the same side of the same subject."

I will now give you some of the outlines of my books indicating some of the remarkable "coincidences" between youe books and mine. I shall not probably detect all of them as I must write hastily & without time to peruse either your book or mine.

1. In my "Introduction" I advert[?] to the proslavery Construction formerly put upon the British Constitution, in which I refer to the opinions of York & Talbot, and the decision of Lord Mansfield in the Somerset case intimating that a similar application of legal principles would reach the same result here. –The same "idea" will, I think, be found prominently in your work, which succeeded.

2. In the same Introduction, I insisted (contrary to the commonly prevalent notion, even among lawyers) that the law, in its essential nature and foundation, is "immutable and eternal" that neither punishments nor precedents can constitute law. In my closing chapter (VII) I expand this idea – maintaining that "absurdities cannot become law – that Law cannot be created by ma – but can ~~be~~ only be discovered, obeyed and applied." –that Civil Government is a

science, and as such, must be based on fixed realities, on something "besided mere" punishments and books being founded in the "nature and relations of man." –

Now I do not, of course, claim to have originated this idea. Strictly speaking, there are few, if any, original ideas – (a good reason, by the bye, against supposing that a mere "ideas" can be made the subjects for property and a copy right. The attempt would too much resemble that of making property of men ✝ But I suppose I may have been the first of out times to apply this idea, as a legal principle, to the question of the legality of American slavery. At least, I was the first to do this in a "copy right" publication. – But I think you will find this process of reasoning quite essential to your book as may be seen un your Chapter I "What is law"?

3. In the same Chapter VII entitled "Nature and the foundation of Government and Law" I have shown not only that Law must be something fixed and abiding, laying this a foundation for legal science, but that it must have its basis in justice and moral right – that there is only universal law Law, conincident with the will of the Universal Law Giver or Creator – a "Common" Law, ion the proper sense of the term, without or afainst which there can be no valid binding law. And this I applied to the Slave Code, proving thus that there could be no valid law in favor of slavery or making it legal. Here again, without claiming an original idea, I may claim to have made the first (copy right) publication applying the idea in proof of the illegality of slavery. –But the same thing is, I think, substantially done, in your "Chapter I." and the idea runs through the whole fabric of your subsequent argument.# Take away that "idea" and if I should have successfully urged that claim, it would, I think, have spoiled or suppressed you book. And then I should have lost the benefit of your corroborative testimony and assistance in my unpopular position when that "idea" was feared, even among those who welcomed my conclusion. –I will remember how I was congratulated on having found a Co-adjietor[?] (if not a convert) when your book came to conform or re-interate my "radical" notions . I know there is a wide difference between our technicalities on the subject, your language being that of the Courts and min that of the pulpit. You speaking of "natural law" and I of the "will of the Creator." You quoting legal authorities, and I the Hebrew prophets. The essential ideas and the legal applications of it, nevertheless, the same. Your first and my last chapter furnish but one key note to both your book and mine. –

4. In my statement of the "question at issue" (Chapter I) I insisted that American Constitutional Law was either for or against slavery – that there can be no middle ground – that if the Constitution guarantees or permits slavery it overthrows general liberty – overthrowing The Federal Government itself. This was in opposition to the common theory, at the time. In contrary to the platform of the "Free Democracy" now. –The "idea" (so far as I know)

was first put into a copy right publication by myself. But I think the same ideal underlies your work – particularly the "Part II" wherein, towards the close, you show, in detail, a number of ways in which slavery, if tolerated by the Federal Government, subverts the Federal Government, & undermines the personal security & liberty of the people. There is little if anything, distinct, of this idea, as your first part, which "was contemplated and in part projected," and "a large portion of it written before you saw" (mine.)

5. In my Chapter II on "Strict Construction" I think I have applied to the exposition of the Federal Constitution, essentially the same principles of construction that you have in general, proceeded upon in your work. –That is, I went on the principle that the meaning of the Constitution, its intent and the "understandings" of the framers ~~was~~ were to be gathered only from their words or language, and accorfing to the ordinary or authorized standards of interpretations of language. I insisted that no reference was to be had to history "to pose on daily passing events" for a key to the meaning of the document" (pg 21) _ I [smudge] "the Historian and News Journalist out of Court." –I quoted Lord Tenterton[?] in Notney vs. Buck in favor of this rule of strict construction even in cases where a rigid adherence to the words would hazard a defeat of the object in view. (pg 27)How much of originality there was in this application of the principle of strict construction to the Constitution of the IS for the purpose of making it an anti slavery & not a proslavery document, I pretend not to say. O was the first that appeared with a copy right. But I think it quite a prominent "idea" of your book though in a style and technicality differing widely from mine. You administered a scathing rebuke to Judge Storey (if I remember correctly) for his having resorted to "history" for the meaning of the Constitution on the slave question, after having denied in a former opinion, the legality of expounding the Constitution by historical and traditionary[?] accounts or "understandings" instead of the precise words.

It is true that after having construed the constitution by the rule of strict construction, I consented, in another Chapter(III) to give the slave power the benefits of a construction according to "the Spirit of the Constitution" – admitting here, for the sake of the argument, the testimony of concurrent history, and arriving at the same result as before, I then obtained a verdict by either or by both rules. In this you did not follow my plan. And here lies of the Chief points of difference between your book and mine. You uniform ~~strict~~ adhesion to the rule of "strict construction" is one of the features of your work which render it acceptable to lawyers and judges, a majority of whom are strict constructionists, ashering to the letter of the instrument.

6. Under my "Strict Construction" argument I examined the clause concerning "persons held to service or labor." And I said, "The condition of the slave is not described at all in the ~~cl__s_~~

clause." (24) "The phrase 'held to service or labor does not describe the legal condition of the slave."(16)

In your argument on the same clause, you say –"Held to service or labor is no legal description of slavery p82. Here you have precisely the "idea" I had expressed, and in almost the same words.

7. In the same connection, I said (of the slave) "He is held as property, 'goods and chattels personal.' but the law knows nothing and has nothing to prescribe concerning his 'service' or uselessness – his 'labor' or his idleness"(p24)

In your argument you say "Slavery is property in man. It is not necessarily attend__ with 'service and labor' And you expand this idea. pp 82-83. Another "remarkable co-incidence" both of "idea" and expression.

8. I said further – "The highest prized slaves, those commanding incomparably the largest sums of money in the market are 'h_t_s' bought and sold for other purposes than 'labor' – purposes altogether incompatible with it." "The law requires labor of him, whatever his master may do." (p. 24)

Your argument conveys ~~illustrates~~ the same "idea" by a different or additional illustration of it. –"A very considerable portion of the slaves are either too young or too old, too sick or too refractory to render 'service or labor.' As a matter of fact, slaves who are able to labor, may, in general, be compelled by their masters to do so. Yet labor is not an essential or necessary condition of slavery. The essence of slavery consists in a person's being compelled to labor, or permitted to live in idleness, or of his being too young, or too old, or too sick to labor." p.p. 82-83

9. I said further –"If this clause of the Constitution does apply to the slaves, it emancipates them." –(p.25.)

You said "If service or labor were either a test or a necessary attendant of slavery, that test itself would abolish slavery." -(p. 83) –The essential "idea" is the same. Yet your mode of maintaining it differed a little from mine. –I had said that a person from whom labor was legally "due" must be legally in possession of self-ownership, and could not be legally a slave. – You said that "all slaves before they can render service or labor must have passed through the period of infancy when they could enter neither service or labor, and when, therefore, according to this test, they were free. And if they were free in infancy, they could not be subsequently enslaved." (p.83)

The core and pith of both your argument and mine, here, lies in the principle. I had laid down, viz: that "all such language is inapplicable to the condition of a slave." (p. 25) –and that "held

to service & labor does not describe the legal condition of the slave." (p 24) Granting this (but not otherwise,) there is force in my illustrations, and in yours, and such illustrations might be indefinitely multiplied and varied.

10. I said further -"The clause does describe a condition familiarly known among us – the condition of 'persons' as distinct from 'things' – persons who are held to service and labor under the laws of the state wherein they reside – persons from whom such service or labor may be 'due' because they may have contracted to ~~discharge~~ perform it, or because it may be 'due' to parents or guardians" &c. -"Such is the condition of the apprentice, the minor, the contractor of job work, the debtor, who is 'held to service and labor' by the terms of his own voluntary agreement". (pp. 25-26) _

You say, "The proper definition of the word 'service' in this case obviously, is the ~~appreulites~~[?] labors of a Servant" &c. &c. -"Many seem to have been indented ~~apprentices~~ as servents bu the public authorities" &c. &c. "Many were doubtless indented as apprentices by their parents or guardians, as now" -"Many indented or contracted themselves as servants, for the payment of the passage money to this Country." (p. 82) – Here we have again the same "idea" and in similar language. – Your allusion to emigrants – "German redemptioners: &c. was not new to abolitionists, who, has used it for years previous – though I do not now see it in my book.

11. Apportionment of Representatives and direct taxes. Art I Sect 2 Clause 3 –I remarked –"Nothing is said about slavery, and since nothing is said, how can 'strict construction' admit the plea that something was intended? "It will by no means admit that when the Constitution speaks of 'persons' ~~and~~ (of human beings in distinction from things) it means 'guides and ~~pers~~ Chattels personal, to all intents, constructions, and purposes whatsoever.' – of 'things,' in distinction from sentient beings'" (p. 28)

You, too in your argument on this clause, deny that it says any thing about slavery or slaves. – And you employ and elaborate argument to show that it did not. I cannot say, positively, that it is exactly that Alvan Stewart was wont to employ in our Conventions. But hundreds of persons well remember that, at least, it closely resembles it. [Of course, you did not get it from him, nor he from you.] In writing my book, I thought it too clear a case to require a complicated argument. I relied on the one brief argument above recited, only adding, en passant, that if it did mean slaves, it was no "guaranty" of slavery but only a shrewd bargain between Yankees and southerons about tax paying, in which Jonathan swapped away political power for pocket money, and, as usual, got cheated out of the mess of pottage for which he sold his birthright.

Your closing paragraph on this clause (pp 96-97) which I read not repeat, runs out, a little, I think, from the "Strict

Construction" train of argument, and corresponds, very nearly, with much that I have suggested under the head of "Spirit of the Constitution." &c. –too lengthy to copy here – The same remark, I think will apply to much of your Chap XIX. Part Second, on the same subject. In this, as in some of you other later works, you seem almost to step out of your peculiar position, as a lawyer, pleading before judges, into mine, as an agitator, urging political considerations to the people. I think you might increase your influence by going further into that line and style of writing. I should like to have more of your assistance in that way, and I promise you that I will not interpose my "copy right" to prevent you from doing so. I will neither regard you as "an enemy or a rival."

12. "Migration and importation." Art I Sec 9 Clause 4 –On this clause I laid down as a "self evident truth that 'persons' are human beings, with 'souls' as well as bodies – that consequently, they are not 'chattels personal' and 'things.' The dictionaries tell us this. 'Strict construction decides according to the meaning of the words, and the word 'persons' cannot mean 'slaves.' Strict construction accordingly reads this clause as applicable to the ingress or egress of 'human beings with natural rights – a man, woman, or child considered as opposed to things, and distinct from them.' There may be English, French, Dutch, Irish, Malay, Hollentot[?], Hindu, or African. But they cannot be slaves" (pp 29-30)

In your argument on this clause, the same sentiments and "ideas" are substantially expressed. – "The slave argument, from this clause is, that the word 'importation' applies only to property" &c. – "But the idea" –"is erroneous. It applies correctly to both persons and things." - "We speak, daily, of the "importation of foreigners into the country" but no one infers, therefore, that they are brought in as slaves but as passengers" &c. &c. (see the whole)(pp 97-8) ---You took the word "importation" – I took the word "persons" –You inferred that the importation were not necessarily slaves. –I inferred that they could not be. –We both agree that the clause does not describe the importation of slaves. Further on, I find you taking up the word "persons," as I had done – "Even the popular understanding of the word 'importation' when applied to 'persons' does not convey the idea of property" "Even slaveholders and slaved traders attach no such meaning to the word 'import' when it is connected with the word 'persons'. But only when it is connected with the word 'slaves,'".(p:98) This implies, if it does not directly affirm that "persons" cannot mean "slaves" the very "idea" I had insisted on, and almost in the same words.

Further on, you notices that , upon the pro-slavery Construction of this clause –"any masters of vessels from England or France, as well as from Africa, might, on their arrival here, claim their passengers as slaves" (p.100.) – an expression, very closely resembling mine, above quoted, in which I mention "English, French, Dutch, Irish, Hollentot[?], Hindu, or African." –You revert to this

again (p 101) and speak of making slaves of "Englishmen, Frenchmen, or any other civilized people." -In this, I see only an expansion and amplification of the "idea" I had briefly hinted at. –I do not say that you took the hint from me. It may have occurred to your mind, as well as to my own.

[I have now gone over all "the So called slave clauses of the Constitution of the U.S." which I find discussed in your work, and in respect to which you say, in your letter of jan 1st - - "And finally, I did not suppose you could make much of an argument (as I think no body else has ever done it) without adopting the same arguments which ~~that~~ I had used, and which I suppose you would concede, were, with hardly and exception, entirely different from any that had been published before." – Well. – I have now shown you how "much of an argument" that I did make and publish, with a copy right, " make and publish, with a copy right, "before" I had ever seen your argument or even heard your name. These arguments, I think, will still suffice for me, in writing for the National Era. How far they are "the same arguments which (you) had used," in 1845, I leave you to judge. Decide as you may. I had previously used and published them in 1844. They either are the same, or they are not. – If they are, then, it my right, and not yours, that has been infringed. ~~If it is not the~~ If they are not "the same arguments," then there can be no objection to my using them again.]

But, in my work, I considered two ~~one~~ other "so called slave clause of the Constitution: viz that in which it is commonly supposed that the Federal Government are bound, or at least, authorized, to put down a slave insurrection. Art I Sect 8 Clause 14 –I showed that this does not warrant, much less, require the use of the Federal force to quell refractory slaves. –"Property" never commits "treason" or raises an "insurrection": and (2) the guaranty against "domestic violence" I showed to be a guaranty – not against refractory property, but against "domestic slavery" – system of "domestic violence" from beginning to end.

In your remarks on Art I. Sect 8. Clause 14 as being among the "positive provisions of the constitution, in favor of liberty." (p. 106) –you seem to have hit upon a kindred idea, where (p 116) you claim that "the people", including those held as slaves, have a right ~~to~~, under the Constituion, to "keep and bear arms." [Amendment 2] On this co-incidence as being less palpable. I shall not insist, and do not enumerate it among my "specifications."

13. Reserved rights of the States. – "The powers not delegated to the United States by Constitution, nor delegated to it by the States, are reserved for the states respectively, or to the people." Amendments Art 10

The current exposition of this article, not only denies the right of the Federal Government to abolish slavery in the States,

but claims for the States the right or authority to do and enact whatever the Constitution does not, specifically, and in terms, prohibit. Against this disorganizing & despotic principle, I entered a decided protest in my work of 1844.

"'The powers' – What powers? All possible and impossible, conceivable and inconceivable powers? The power to make black white and white black? To reduce immortal souls to Chattels? To transform lawlessness into law? To construct a rectangular triangle, whose three angles shall not be equal to two right angles? To hear some men talk of the 'reserved rights of the States' one would think that there rights included the right of omnipotence, or rather the right to do what omnipotence itself cannot do" &c. &c. (p.38)

"It is not affirmed in this Article that the States or the people may lawfully or constitutionally select every tenth man in a township, &c &c and confiscate their property, pro bono publico, nor Colonize then to Liberia to get rid of them." – "They may not seize upon Joseph Storey or Henry Clay or Martin Van Buren, and drag them into unpaid labor in the rice swamps of Florida, without jury trial, without charge of a crime. They may not seize upon every man with a hair lip, or red hair, or with black skin and crisped hair, and do the same thing with them. Nor may they suffer it to be done by others." &c. ----- Ib.[?]

In your work of 1845, (which "was contemplated, & in part projected long before (you) ever heard of (mine) and a large portion of it written before (you) saw" it.) – no notice is taken of this "Amendment," nor of the topic involved in it. –It did not then enter into your plan of a Constitutional Argument. But in 1848[?] when your "Part II" appeared, both the topic and the Amendment 10 received ample attention. (See pg 260 in its connexion) –Your style and manner of treating them do indeed differ widely from mine – (as mine in the National Era will, of course, differ from yours.) You treat the subject more coolly, more lawyer-like – with appropriate legal technicalities. –The Judges will better understand & appreciate your form of the Argument. The main Sentiment – the leading "ideas" are considerations are coincident, if not identical, nevertheless. And when you quote the authority of "1 Cranch 1. Peter's Digest 578." I do not suppose that you claim to have introduced any new "idea" by so doing, or that you would so construe the law of the Copy Right as to preclude me from quoting, hereafter, if I should wish to do it, the same legal authority.

14. Preamble to the Federal Constitution – I argue that the Preamble itself was inconsistent with any guaranty of slavery, or tolerance of its existence. ---- "1. 'To form a more perfect union' then it does not mean to permit 'one half of the citizens to trample upon the rights of the others – to transform those into despots, and these into enemies.'* as is done by slavery. – "2. 'To establish justice' Then it does not mean to guaranty or tolerate injustice" –

"3. To ensure domestic tranquility' – "Then it does not mean to tolerate or permit domestic violence" &c, &c. – "4. To provide for the common defence" Then it does not mean to permit a common warfare upon the defenceless" &c &c 5. To promote the General Welfare." Then it cannot mean to promote or guaranty the known & Admitted enemy of the general welfare – slavery" &c "6. To secure the blessings of liberty to ourselves and our posterity"' Then it means to overthrow the deadly antagonist of liberty – viz. Slavery." (pp 40,41)

Such were the heads of my argument, which assumes as a first principle, the citizenship of the slaves, as affirmed by Jefferson in the above extract. That "We the people" meant all the people has long been affirmed by abolitionists in this region, and no body worth disputing with disputed it. I did not thin it necessary to prove what was uncontraverted and self-evident. – But the idea was manifestly implied and included.

In your argument, you entered largely into the proof of this citizenship of the slaves, and their claim to be a portion of "We the people." In Massachusetts and perhaps among technical lawyers elsewhere, the argument was quite useful. In New York State, it was sufficient to assume it. Having established that point, you applied it as I did and showed that the "people" and their "posterity" could not be legally enslaved (p110) – and you cited, as I had done the clause declaring the National Constitutions "paramount to all State Constitutions" &c. for the purpose of showing that the states could not legalize slavery. Your argument was ~~differently~~ proportioned differently from mine: -You labored a point that I assumed – I dilated[?] on results that you briefly alluded to. – The two arguments were co-incident, nevertheless; the substance of both being that "the people of the United States" under the aegis of the Constitution, as expounded its Preamble, cannot be legally enslaved.* -"Powers of Congress" was the next topic discussed in my works, in which my "ideas" and yours appear to harmonize. But I will note enumerate this as a distinct "specification" here. I shall find it, perhaps elsewhere

Power over Commerce. The Congress shall have power to regulate Commerce with foreign nations and among the several states, and with the Indian Tribes." Art I Sect. 8. Clause 3.

Under this clause I argued the power of Congress to determine what was a legitimate article of commerce and what was not.

From the same clause, you arguer the right of Congress to legalize traffic with slaves, and by slaves. – Your conclusion seems to stand upon the shoulders of mine, for if the slave remains an article of traffic himself, he cannot be a trafficker in merchandise. If "ideas" are subjects of Copy right, as inventors are of patent right, I don't know how this would work. "House" could improve on "Morse" but the courts said he must first ask leave of

Morse! I think I shall press no claim here! – Let it pass – But I think if I should happen to repeat your "idea" I hope you will be lenient, in ~~this~~ such a case.

15. Republican Governement. "The United States shall guaranty to every state in this Union, a republican form of government." Art 4. Sect. 4 pp46-7

I maintain the this clause was a guaranty against slavery. You maintain the same. Pp 24 & c.

16. To prove my position, I entered into an elaborate definition of a "republican government." –You did the same.

17. In my definition, I excluded oligarchies" –You did the same~~. and you~~ I specified (in a quotation from Madison) Holland, Venice, Poland and England: -You mentioned S. Carolina, England, the States of the P___[?] the Ancient Jews, &c. (p.128)

18. I construed the term "guaranty" to convey to the Federal Government, full power over slavery in the States. You did the same.

19. I said – "What are we to understand by a republican form of Government?" – "A commonwealth, a state, in which the exercise of the sovereign power is lodged it representatives elected by the people." &c. (quoted from Webster)

You said – "And what is a republican form of government>" "It is where the government is a Commonwealth – the property of the public, of the mass of the people" &c.

20. I said – (quoting from Jefferson) "The true foundation of republican government is the equal rights of every citizen in his person, and property and in their management.:

You said – "It will have for its object, the protection of the rights of all.

21. I said (quoting from Madison) "It is essential to such a government that is be derived from the great body of Society not from and inconsiderable, or, a favored class of it."

You said – "It is indispensable to a republican form of government that the public, the mass of the people, if not the entire people participate in the grant of powers to the government, and in the protection afforded by the government."

22. I said "Very evidentially a Slave State cannot be a republic." (p. 51) "The sovereign power of the State cannot be 'lodged in representatives elected by the people, in states where one fourth, one third or one half of the people are held in slavery. –There is no common interest, no "Commonwealth" &c. &c. (p 47.)

~~23~~ You said – "It is impossible therefore that a government under which any considerable number of the people (if indeed any number of the people) are disfranchised, and enslaved, can be a republic. A slave Government is an oligarchy &c. (p. 125)

23. ~~24~~ I adverted to the Declaration of Independence, Bills of Rights, Preambles, Constitutions &c (State and National) for definitions of republican Government. p 48

24. ~~25.~~ I had demanded "What form of government the United States might not permit to be established and maintained in the different States, without a breach of the guaranty?" – (i) if the guaranty did not protect them against 'a government that should challenge its citizens.'" P.57

You say – "Had not this power been given to the General Government, the majorities in each State might have converted the State Governments into oligarchies, monarchies, or despotisms, that should have trampled upon minorities." &c. &c. – A very ~~pertenent~~ pertinent response to my demands and ~~embracing~~ presenting the same idea in a different form of speech.

25. ~~26.~~ Security of liberty due process of law"

Under this head I quoted Art. V. Amendments "No person shall be deprived of – life, liberty, or property, without due process of law."

In discussing this Article, I showed that is secured the right of trial by jury, and privilege of the writ of Habeas Corpus. – I maintained that the this process included "indictment and ___ctment[?] by Grand Jury" "Trial by petit jury, and judgment of Court." ~~Without this~~ I maintained that without this "due process" no "no person" could be legally deprived of liberty that the States had never been deprived of liberty by this process, and consequently, were legally free. Pp. 57 &c.

You also have treated of the Constitutional right of trial by jury, and the privilege of habeas Corpus = And you reach this conclusion "If" (the habeas corpus) "accordingly liberates all who are held in custody against their will (whether by individuals or the government,") unless they are held on some formal writ or process, authorized by law, issued by the government, according to established principles, and charging the person with some legal offense or liability. p 121.

26. ~~27.~~ "No State shall pass any law impairing the obligation of Contracts." – I maintained that Slave laws impaired the obligation of contracts, and that slavery was therefore unconstitutional (pp. 69-70) – You maintained the same. (p 116-117)

26. ~~28.~~ "Intentions" "Understandings" &c. "Implied Faith" &c. Under the head of "Special Pleadings," &c. O had exposed the fallacy of the pleas commonly urged on these topics. – I had demanded the evidences of them – "By who, was that implied faith pledged?" "With whom was the understanding held?" "With the particular members of the social convention in which the Constitution was drafted?" – "'We the people of the UStates' knew nothing of the matter, any further than appeared in the written document itself, that such laws submitted to the people for their adoption." (p 121) – "The doors' Sen W Marlin[?] were shut and the other whole proceedings were to be 'kept secret'" (p 124). – "What of it could be proved that is was so" (ie that the convention designed to support slavery.) "Would the people of the United States who knew nothing of the fraudulent procedure, be bound by the wicked intentions of the framers or of a portion of them, instead of the natural import of the language they employed?" (p. 123)

In your Chapter on "the intentions of the Convention," you held similar sentiments, expressed similar "ideas" –used similar language, and adverted to the same fact of the secret settings of the Convention. You make (as I did) the Constitution to be the act and instrument of the people who adopted it, and not of the Convention who drafted it. You demanded, as I had done, the evidence of such wicked intentions in the Convention, intimating, as I had done, that only a part of them could be supposed to have had any such intentions. –You devise as I did, that there is any evidence that the people adopted the Constitution with the intention of sustaining slavery.

28. ~~27.~~ The State Constitutions – I had a Chapter heading "Of the legality of Slavery by the Constitutions of the Slave States." In the use of the Old Volume that I had carried about to Lecturing & Conventions for quotations, I cited the Constitutions of a number of the Slave States and showed that they were incompatible with slavery.

You had a Chapter on the State Constitutions of 1789 – and another on the State Constitutions of 1845. – from which you also make sundry extracts in proof of the same position.

29. ~~30.~~ "The Declaration of Independence." – I had a Chapter thus headed. – So had you. – Mine maintained that the Declaration rendered slavery illegal and unconstitutional in all the states. – So did yours.

30. In my arguement to prove this, I maintained that the Declaration was ~~still in force~~ "a part of (our) 'Constitutional law.'" You said – "The Declaration was certainly the Constitutional law of the Country for certain purposes."

~~32. I said "The Constitution of 1775 is still unrepealed." (p~~

~~139) That "it was never repudiated by the Slate States and is still binding upon them. You also urged the same arguments. You said~~

31. ~~32.~~ I said the Declaration of Independence was of supreme and paramount authority over all our <u>other</u> Constitutions & laws – and I quoted the Hon. John C. Spencer as having affirmed it.

You said the "principles" of that declaration were "law" (p. 42) and that its "self evident truth constitutes a part of all out laws and all our Constitutions, unless it have been unequivocally and authoritatively repealed." (p99)

32. ~~33.~~ I said that "if the Declaration <u>has</u> been repealed, the States have sunk back again into the Condition of Colonies." (p 136). You said that if the Declaration absolved the ~~people~~ colonial subjects of Britain from their allegiance, it necessarily follows that the principles that authorized the act were also law." (p. 42.)

33. ~~34.~~ I said the Constitution of 1776 (meaning the Declaration) is still unrepealed." (p 135) – And "the Declaration, never repudiated by slave states, is still binding upon them. (p 140)

You said – 'The self evident truth' (i.e. of the Declaration) <u>has never been denied by the people</u> of this country in their fundamental Constitution, or in any other "explicit or authorized manner' On the contrary it has been reiterated" &c &c, &c. "We have virtually reasserted the same truth, in nearly every State Constitution since adopted." (pp 44)

34. ~~35.~~ I maintained that the Declaration was a <u>national</u> act, so that its law, abolishing slavery, was a national Act. In doing this, and in quotations from John Quincy Adams, I repudiate (as elsewhere in my books) that pro-slavery doctrine of "State rights" that you also in your works have repudiated, and declared to be a "Nullification." Yet,

35. ~~36.~~ I maintained that "the Declaration, if the Act of the Separate States, is equally fatal to legal slavery." (p. 140) – Being "actually made by the thirteen states it follows that <u>by the power of that Act</u>; slavery was abolished in wach and every one of those states an has been illegal ever since" &c .. (p 141) And I showed that the Courts in Massachusetts has acted accordingly (p 139).

You said, ~~that~~ admitting slavery to have existed prior to the Declaration, was it not abolished by it? (p. 42)

Is there no "remarkable co-incidence" of argument here?

36. ~~37.~~ My next chapter was :Of slavery under colonial authority – its legality questioned."

I demanded to know by what legal authority the colonial legislatures could establish slavery? Or "enact slave laws'? – "Was that authority derived from the Crown, Parliament, Judiciary, or usages of G. Britain? If not, from whence was it derived, while the colonies recognized their colonial obligations to G Britain? They claimed no right to Sovereignty then?" (p. 142) "No lawyer ever thought of going to Common Law for a warranty for slavery or slave laws" –(its) adverting again to the decision of Lord Mansfield, in Somersett's Case, I said, it was made on the broad principles of common law. The decision therefore was, that slavery never had been legal in England" – "As slavery, therefore, had never been legal in England, how could it have been legal in the Colonies? The ~~common law~~ colonists brought the common law of England to this country with them, and their recognition of it as a rate[?] of judicial proceedings was among their most cherished rights. If slavery was illegal in England because it was contrary to Common law, how could it be legal in the colonies where the authority of the same common law was recognized? And if the English Courts could discover and decide its legality, why could not the Colonial Courts do the same? And why where they not bound to the same? The common law declares that human laws are of no validity if contrary to the law of nature, which is ____ __ mankind, and dictated by God himself. "If this was permitted to be recognized, even at the Court of King's bench, it is credible that there was any authority ~~in the~~ in Colonial legislation too high and too sacred to bow to the same principle when enforced by a colonial court. (p. 143) &c. &c. "These questions will be understood as preliminary to another question, where there was any any [sic] legal slavery in the Colonies during the years from 1772-1776? If there was, then the common law permitted in these colonies what it would not permit the mother country? (p 144)

In a previous chapter I had shown by numerous Authorities that the common law was not only the preriding[?] Genius of the Federal Constitution and of the Declaration of Independence, but that, according to "Geo. Pownal[?], one of the most eminent Constitutional jurists of Colonial times – In all the colonies the Common law is ____ as the foundations and main body of their laws.' I quoted a Revolution of the Continental Congress to the same effect, in 1774. You have a corresponding Chapter, entitled "The Colonial Charters" commencing – in nearly my own words – "When our Ancestors came to this country they brought with them the common law of England." &c &c. "which prevailed in England and which have made it impossible that her should be tred by the foot of a slave." (p. 24)

You, also, in the same connexion, advert to the decision of Lord Mansfield, and you said – (as I had said) "This decision was given in the year 1772, and for aught I see, it was equally obligatory in this country as well as in England." (p. 26) "That decision, then, if correct settled the law, both for England and for the colonies. And if so, there was no constitutional slavery in the Colonies, up to the time of the revolution. P. 35

In this Chapter you cite some of the colonial charters, in proof of the same doctrine. I had head Adam Stewart affirm that such was their provisions, but being in Honoye[?] (a remote country village) & unable to travel on account of ill health, I did not take pains to hunt up the documents. – They only furnish and additional comfirmation of my main "idea"! that the Authority of Common Law in the colonies, rendered legalized slavery impossible during the Colonial State. – I had sufficiently fortified that argument or "idea" by my quotations from Gov. Pawnall[?] and the Continental Congress (1774).

37. And this reminds me that I am entitled to another distinct specification, in the item of Common Law" I had a distinct heading, "Specimens of Common Law." (I accidentally omitted to notice these in their proper place.) This covered a wider field than that of our Colonial History, and I proved that the Common Law is still of Paramount authority in this Country and that consequently slaver could neither be Constitutional nor legal in the U States. And here I quoted some of out most eminent jurists and also some of the most approved ____[?] of common law.

I need not tell you how much this same "idea" runs through the entire structure of your subsequent writings on the same subject – nor how freely you have quoted from the same and kindred writers using many of the same paragraphs that I had collected and published before you.

38. In your chapter X you lay down the principle that "the practice of government under the Constitution" has not altered the legal meaning of the instrument." The same principle, tho' not in the same technicality was prominent in my Introduction, and is implied in the whole argument.

It would not be difficult, I think, to add to these specifications. The very "idea" of the "Unconstitutionality of Slavery" (the title page of your book) was previously in my "Copy right" book, and by your rule, I do not see how you could use it without infringing my right. I was the first "Copy right" author that announced that "idea." But without counting this, I have enumerated 38 distinct specifications, in which you have used "ideas" or facts which I had used before – and of which – if your views of the law of Copy right be correct – I had secured the Copy right.

Your letter of Jan 1 enumerates 4 cases and yours of 5th intimates 2 more – making 6 in all – in which you think I have used your "ideas."

1. That a statute legalizing slavery must clearly identify and distinguish who are slaves. I am not certain that I can find this idea directly stated in my book, nor am I certain that it is not

implied or involved. I have not time to examine now. – But it does not strike me as that that feature of your book was new to me, though the precise words of the law were not in my mind. – I remember Alvan Stewart used to say in our Conventions that there was no statute law for ~~enslaving~~ John Randolph's enslaving his man Juba, than there was ~~Juba's~~ for Juba'

2. That slave laws to be valid must have constitutional authority &c. This "idea" you will perceive, I had previously used, having shown that the Colonial legislatures were subject to the Constitutional law of England, under which slavery could not be legalized.

3. That slavery is contrary to the State Constitutions &c. Here you see, I was before you! So that if such a use of the State Constitutions could be secured by a Copy right – (as you suppose) it was my right, and not yours that had been infringed.

4. That the "so called slave clauses of the Constitution" could not be disposes of without the use of your arguments. This point, as you must have now learned, has been so disposed. Of, as to suggest the story of – "It is your bull that has killed one of my oxen." & c.

5. Mr. Pitt's quotion [sic] from the Act of the British Parliament forbidding instead of authorizing the slave trade. This I got from Clark's History, from which I quoted it, in the previous number (Dec 22) as you would have seen had you looked at the previous paper [It was an error of the printer in dividing my No. 5 and not putting No 6 as part of No 5 – as I it] ~~That~~ Clarkson's History was in my possession, and I had read that paragraph in my Lectures and in public conventions many times before my book (not to say yours) was written. – You cannot suppose that your "Copy right" has deprived me of the right of still using that book.

6. The next paragraph of my No. 6 was only an obvious reference or rather amplification of Mr. Pitt's speech, before cited. If I am indebted to any one for it, I think it must have been Charles Atwood[?], the biographer of Granville[?] Sharpe, with whom I was familiarly acquainted, & has often heard him dwell on the subject, in conversation, as well as in public, as early as 1837 – or 8. – I have not with me my Copy of his book, to see what is says there. But I know that a prominent theme of that book was the illegality of slavery and I think that he adverted to the Statute of Geo II and to Pitt's use of it for the purpose of showing its illegality. – And I have known for 15 years past, that Clarkson and others in England made use of the same facts and arguments during the agitation for the suppression of West India Slavery. I know, further, that these arguments and efforts of British Abolitionists were familiar to Abolitionists in the State of New York from 1834-1844, and were often adverted to in the Conventions, to show the illegality of

slavery in all the British colonies.

The "Newspaper Articles" I mentioned, as furnishing me with additional matter, were such as relate to recent events, as proceedings in Congress, judicial decisions &c. of which I presumed there could be no Copy Right.

It would be quite and expensive task to furnish you duplicates of my articles now publishing. My own time, after today will be absolutely occupied. I repeat my readiness to show them to you, & consult with you. – But I cannot help think what I have presented to you, will satisfy you that you were mistaken in supposing that I am infringing on your Copy right. – I know (for you have said it) that you do not think me disposed to do so. And I feel confident that had you been fully aware (as you will now be_ of the facts of the case, you would not have thought me a trespasser. Nor would you, I think, have been forward to press upon my attention those views of the law of Copy right that you have propounded.

I may venture, I think to suggest, the inquiry whether you would be willing to erase from your works all the "facts" and "ideas" that I had previously published [smudge] my Copy right books; on condition that I shall erase from my present and prospective publications ~~writings~~ all the facts and ideas, (not contained in my first work) that had been published in your copy right books?

By my enumeration (thus far) ~~and by yours~~ the difference in my favor would be at least, as 38 to 1. – Or giving you all you have (thus far) claimed, (a part of which, I am sure you will not again claim) it would be 38 to 6.

I am, my dear sir. Very truly Yours,

WM Goodell