

CONSTITUTIONAL TRADE-OFFS PROTECTING SLAVERY IN 1787

Abstract of Course

Property in slaves began in North America in 1619 with the arrival of the first Africans in the Colonies. Review the NY Times Pulitzer Award essays for “The 1619 Project” to appreciate the role of property in slaves for the creation of the U.S. republic and the depth of racial prejudice and discrimination over time to today. Despite early recognition of the immorality and unfairness, and despite precatory expressions of freedom and equality in the drafts of the Declaration of Independence, the Articles of Confederation, and the Constitution, wide-spread discrimination has been the result. How is this possible after 235 years claiming a founding based upon freedom and the right to pursue life, liberty, and happiness? Consider the record establishing Southern willingness to join the Northern Rebellion was premised on the desire to ensure the holding of Somerset v. Stewart (English High Court, 1772 Lord Mansfield) would not be enforceable in America thereby protecting the property right in slaves. Follow the path of rhetoric embodied in the Great Compromise, States Rights, Popular Sovereignty, Separate But Equal, and Neighborhood School concepts used to provide legal cover for the resulting discrimination. Study and discuss a key document expressing each concept to follow the evolution of terms that maintain systemic racism.

Two questions will motivate our discussion: (1) to what extent can one attribute the systemic racism present in the U.S. today to constitutional provisions negotiated in 1787 and (2) if the Northern states had rejected the provisions on slavery demanded by the South would a Federal Union nevertheless have been achieved on different terms? To obtain Southern participation in the Declaration of Independence, the Articles of Confederation, and the war effort did John Adams have to tacitly agree to shield and legalize slavery? Historians dislike contra-factual propositions and generations of Americans have been taught to revere the Constitution, but step outside your comfort zone to consider the hypothetical regarding how the United States might have formed as two entities with different human rights. What is the cumulative cost in human life and misery from believing “slavery was the necessary evil on which the Union was built?” Develop an appreciation for the long-term impact of the Great Compromise on U.S. society including on the ideals we claim to revere and pursue. Should we view the U.S. as great, but imperfect, as we aspire to be the land of the free, or should we acknowledge reality and do penance?

Catalog Description

To what extent is the systemic racism present in U.S. society attributable to the constitutional provisions negotiated in 1787? Delve into the record and consider the political alternatives to consigning 4 million African slaves and millions of their descendants to slavery, criminal attack, and Jim Crow discrimination for over 165 years. The colonial push to a powerful central government ended with the revered Great Compromise. Consider the question- Great for Whom? Discuss the attempts to hide this history- critical race theory.

Course Reading Materials

1. The 1619 Project: A New Origin Story, Nikole Hannah-Jones, 2021
2. Slave Nation: How Slavery United the Colonies & and Sparked the American Revolution, Alfred and Ruth Blumrosen, 2006
3. Race and Revolution, Gary B. Nash, 1990
4. New York Times, The Constitution's Immoral Compromise, February 27, 2013 (5 Essays)
5. Specific documents, e.g., the 1st drafts of the Declaration of Independence, the 1st draft of the Articles of Confederation, Somerset v. Stewart, and the 13th Amendment will be distributed by email to registered class members.

SCHEDULE AND MATERIALS FOR DISCUSSION

- Week 1 Introduction to the course; in particular consider the thesis for the effort and the materials for discussion. Was Southern participation in the War effort conditioned on Northern protection of slavery in order to avoid the imposition of Somerset v. Stewart by achieving independence from Britain to preclude the application of English common law?
- Week 2 "The 1619 Project" created and coordinated by Nikole Hannah-Jones. Is our current political environment which exhibits systemic racism a function of constitutional quid pro quos?
- Week 3 Lord Mansfield, Chief Judge British Royal Court, Somerset v. Stewart (1772). The impact of the decision in Britain and its colonies/territories. The justifiable legal fears of the South and the story of unification of the colonies in Rebellion.
- Week 4 The First Continental Congress in 1774 and John Adams judgment and tacit acceptance of slavery. Thomas Jefferson's First Draft of the Declaration of Independence (June 11-28, 1776) and John Dickinson's First Draft of the Articles of Confederation (June 17-July 1, 1776). The equality of mankind enhanced and the acceptance of slavery diminished. The Southern strategy to preserve slavery without risking "having to go it alone." Q-What would have resulted if Adams had cut Georgia and South Carolina free?
- Week 5-6 U. S. Constitution, Provisions accommodating slavery. The Southern strategy regarding slaves as property. Madison redefines the issue from "big states, small states" to "slavery in the future." The role of the Northwest Ordinance. The legal hypothetical framing the negotiation that resulted in the acceptance of slavery as a necessary evil. The ease of negotiating deals where the costs are paid by others, in this case by 4 million slaves and tens of millions of their descendants.

- Week 7 NY Times, February 2013 set of 5 Opinions regarding the impact of the Great Compromise. The case for rejecting the Great Compromise.
- Week 8-9 Given current discriminatory practices would likely not exist but for the institutionalizing of slavery in the constitutional provisions accepted in 1787, what alternatives existed to avoid the Great Compromise condemning millions of people to slavery? Consider the possible paths of history if a Northern U.S. and a Southern U.S. were created to evolve in North America.
- Week 10 The political pattern created by the Great Compromise acting as a legal presumption to support discrimination: The Missouri Compromise of 1820, Lincoln’s Peoria Speech of 1854 on slavery in the territories and popular sovereignty, and the 13th Amendment wording in 1865 excepting those serving prison time. The utilization of the long-standing ploys of peonage and debt servitude on the road to a “Jim Crow” regime.
- Week 11 Plessy v. Ferguson, 163 U.S. 537 (1896), specifically Justice Harlan’s dissenting opinion. Property “red-lining” from 1930-1968. Delaware Neighboring Schools Act of 1990 and the ACLU lawsuit of 2018-2019 challenging school funding in Delaware based on property taxes. The uniform impact of allegedly race neutral policies.
- Week 12 The human and social costs of the Great Compromise are large, including the harms and limitations of racial prejudice on individuals, society, economics, and the nation. Reflect on the value of actually meeting the precatory goals of the Constitution.
- Week 13 Where are we as a country today? Summary of the course and class comments. The efforts to avoid the reality of history. Critical race theory and white supremacy. The effort to prioritize white feelings over black suffering.

All documents as originally published shall be made accessible in pdf-format and be available by email (assuming the OLLI provides an email wherein all class members have been blind copied to enable document transmission on a “reply all” note).

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