

INTRODUCTION TO HEINONLINE'S SLAVERY IN AMERICA AND THE WORLD: HISTORY, CULTURE & LAW

Overview

For the last half century, scholars in the United States and elsewhere have focused enormous attention on the impact of slavery on the development of the modern world. Scholars in many disciplines agree that, to a greater or lesser extent, the modern industrial economy was in part (some would say a large part) a result of the system of Atlantic slavery that began in the 1450s and ended in the 1880s. Historians have of course long been interested in slavery. But today slavery scholars are found in law schools, business schools, public policy schools, and medical schools. In universities we find slavery scholars (and courses on slavery) in various departments including economics, political science, literature, sociology, anthropology, fine arts, art history, and archeology. Movies, television programs, best-selling novels, and museum exhibits illustrate how slavery has become a fixture in American popular culture. Universities have sponsored scholarly investigations into whether their history was tied to human bondage. Slavery comes up in political debate over issues of flying the Confederate flag, building monuments, and reparations.

In the United States, slavery—which was abolished a century and a half ago—still works its way into presidential politics. In 2004, during a presidential debate, President George W. Bush (who was seeking reelection) was asked to identify a “bad” Supreme Court decision and he responded by naming the famous slavery-related case, *Dred Scott v. Sandford* (1857), although it was not clear he really understood what the case was about. When Barack Obama first ran for president, some people questioned if he was “really” black because his African ancestry was recent (his father was from Kenya) and thus he had no slave ancestry or heritage.

Analogies to slavery are also part of modern legal debates. Supporters of a women’s right to choose whether to continue a pregnancy argue that denying women this fundamental right is a kind of “slavery” imposed on her by the state. Opponents of these rights compare the decision in *Roe v. Wade* to *Dred Scott*. Similarly, opponents of the death penalty compare decisions supporting the penalty to *Dred Scott*.

In the late 20th century, most American associated slavery with the period from the 1450s to the 1880s when millions of Africans and their descendants were held as slaves in Europe, Africa, South America, the Caribbean, and the United States. But today slavery has taken a new twist, as some people struggling to suppress human trafficking claim this is a new form of slavery. The worldwide issue of human trafficking has led to a renewed interest in historical slavery, with at least some ironic results. In 2011 a distinguished historian of American abolitionism created a new organization, Historians Against Slavery, believing that those who study slavery in the 17th, 18th and 19th centuries should become activists against human trafficking in the 21st century.

Slavery is in fact one of oldest social institutions in human society. Some of our earliest archaeological records document slavery in the Mediterranean basin, the Middle East, China, and elsewhere. The economies of ancient Egypt, Babylonia, Persia, Greece, and Rome were heavily dependent on slaves. Slavery flourished after the fall of Rome, and in the medieval and early modern worlds. Five hundred years before Columbus sailed for the New World, the Vikings and the Arabs were major slave traders. When Portuguese ships explored the coast of Africa in the 1450s and 1460s, they returned with slaves purchased in the ports they visited. In the Americas the Inca, Aztec, and Maya all had elaborate slave systems well before the voyages of Columbus, while in what is now the United States various Native American nations held slaves, usually (but not always) in the

form of captured neighbors. Hawaii had a slave class long before Europeans arrived. In China, India, and elsewhere in East Asia slaves were owned and traded. The discovery of the New World led to an expansion of slavery, the enslavement of local populations mostly by the Spanish (but sometimes in the early 17th century by the English as well), and ultimately, to somewhere between 12 and 13 million Africans being brought to the New World.

Until the middle of the 18th century, few people were bothered by slavery. Plato provided for slavery in his *Republic*, Aristotle believed some people were born to be slaves, and Thomas More assumed there would be slaves in his Utopia. Popes saw slavery as a way to convert heathens, as did Protestant ministers. There were a few prophets ahead of their time who opposed slavery—such as Bartolomé de las Casas, the Bishop of Chiapas, the Mennonites who settled Germantown, Pennsylvania, and the Puritan lawyer Samuel Sewall. But it was only in the mid-18th century that a movement against slavery began, led mostly by Quakers like John Woolman and the founder of the Methodist faith, John Wesley. By the last third of the century, English abolitionists were pushing for an end to the African slave trade, and during and after the American Revolution the northern states took steps to end slavery while some southerners voluntarily freed their slaves. In Haiti slaves successfully overthrew French rule to end slavery there, but otherwise, slavery remained vibrant throughout the New World until the 1830s when England ended slavery in her American colonies. But slavery persisted in the United States until 1865 and in Brazil and Cuba until the 1880s.

However, even while the British Empire maintained slavery, Great Britain started to end the African trade, starting in 1807, with the United States joining in 1808. Thereafter, the end of the slave trade (and eventually slavery) became a significant issue in international relations. In 1815, following the end of the Napoleonic War, slave trading became the first economic activity to be formally condemned in an international treaty as repugnant to the principles of humanity and universal morality (1815). Its practitioners were also the first category of law breakers to have their cases adjudicated before international courts. The Berlin Act of 1884 declared that the slave trade “was forbidden by international law.” The Brussels Act of 1890 (which emanated from the Brussels Conference of 1889) was the first comprehensive multilateral treaty directed specifically against the African slave trade.

In the wake of World War I, most of the leading nations of the world again condemned slavery. The Slavery Convention of 1926, organized by the League of Nations, was designed end slavery everywhere in the world, committing its signatories to attack slavery “in all its forms,” including forced labor, child trafficking, concubinage, and debt-bondage. Slavery was now defined as “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.” Europe had ended slavery within its own boundaries and expected it to be abolished everywhere else as well. But instead, in the next two decades millions would be enslaved in Germany and the lands it conquered, in Soviet gulags, and in the Japanese Empire. Indeed, more people would be enslaved in Germany (at least 12 million) and in the Soviet Union than had been enslaved a century earlier in the New World. In the wake of World War II, enslavement was one of the first crimes to be prosecuted in the Nuremberg tribunals (1945) as a “crime against humanity.” Slavery was the first specific violation of human rights listed in the Universal Declaration of Human Rights (1948) and in every general international human rights instrument thereafter.

Slavery in the United States

Slavery in the United States remains the focus of most scholarly interest. The bulk of the material in this HeinOnline library—**Slavery in America and the World: History, Culture & Law**—comes from or is about the United States. In part this is because slavery was so fundamentally at odds with the self-proclaimed values of the American nation. We are all “created equal,” the Declaration of Independence asserts, and entitled to “life, liberty, and the pursuit of happiness.” Yet the person who wrote those words, Thomas Jefferson, owned about 150 slaves at the very time he drafted the Declaration. Jefferson and his role in

the Declaration embody the great contradiction that the United States was a nation dedicated to liberty and equality while slavery dominated its politics and its culture. For example, between 1788 and 1860 only five presidents had never owned slaves. During most of that period, a majority of the justices on the Supreme Court were slaveholders, most of the leaders of Congress owned slaves, and leading military figures such as Andrew Jackson, Zachary Taylor, and Winfield Scott were slave owners.

Indeed, antebellum America was a slaveholder's republic. The political stranglehold of slavery and southerners not only affected blacks, but also affected whites. Meaningful free speech did not exist in the South for anyone who opposed slavery or racism. Slave owners opposed economic and social development, such as a transcontinental railroad, a national banking system, a homestead act, or federal aid to higher education. Significantly, during the Civil War, when there were almost no slaveowners in the Senate or the House, Congress passed laws creating all of these, including the land grant college system.

Slavery was also at the center of the American economy and American culture. By 1860 there were nearly four million slaves in the United States, worth about \$2 billion at the time (which would be about \$5.5 trillion today). Except for real estate, the slaves were more valuable than any other kind of property in the United States. For example, the four million slaves were worth more than the sum total of all the railroads or banks in 1860. Slavery generated huge profits for the master class and for those who purchased, processed, and sold the most important products of slave labor in the United States: cotton, tobacco, rice, and sugar.

During the Revolution, slavery emerged as a significant political issue. Delegates to the Constitutional Convention in 1787 debated the place of slavery in the nation and in the Constitution, from the beginning of the Convention until the last day, when two delegates cited the proslavery provisions of the document as one of the reasons they would not sign it. From the 1790s until 1860, slavery was a persistent political issue, leading to endless debates, numerous statutes and executive branch actions, and thousands of court cases at the state and national levels. Slavery undermined many national institutions. The Baptists, Methodists, and Presbyterians divided over slavery, and to this day the existence of the Southern Baptist Convention is a relic of the debates over slavery in the 1840s.

In the 1850s the national political parties fell apart over slavery, with the Whigs disappearing and the Democrats running to different candidates in 1860. In the North thousands joined various antislavery organizations, while in the South ministers, professors, politicians, journalists, lawyers, judge, poets, and novelists offered thousands of defenses of slavery. The fear that President Lincoln would harm slavery led to secession and the creation of the Confederacy. The vice president of the Confederacy, Alexander Stephens, noted even before the Civil War began that slavery and a belief in black inequality was the "cornerstone" of the Confederacy. In explaining why it was seceding, Texas declared that slavery would exist "forever" in that state. In the end, of course, secession led to a horribly bloody civil war in which more than five percent of the pre-war population died. That war also killed slavery and led to three new Constitutional amendments to reverse the nation's proslavery history.

HOL's Slavery in America and the World: History, Culture & Law

This HeinOnline collection brings together, for the first time, all known legal materials on slavery in the United States and the English-speaking world. This includes every statute passed by every colony and state on slavery, every federal statute dealing with slavery, and all reported state and federal cases on slavery. Our cases go into the 20th century, because long after slavery was ended, there were still court cases based on issues emanating from slavery. To give one example, as late as 1901 Chief

Justice Oliver Wendell Holmes, Jr. of the Massachusetts Supreme Judicial Court had to decide if a man, both of whose parents had been slaves, could be the legitimate heir of his father, because under southern law, slaves could never be *legally* married. The library has hundreds of pamphlets and books written about slavery—defending it, attacking it or simply analyzing it. We have gathered every English-language legal commentary on slavery published before 1920, which includes many essays and articles in obscure, hard-to-find journals in the United States and elsewhere. We have provided more than a thousand pamphlets and books on slavery from the 19th century. We provide word searchable access to all Congressional debates from the Continental Congress to 1880. We have also included many modern histories of slavery. Within this library is a section containing all modern law review articles on the subject. This library will continue to grow, not only from new scholarship but also from historical material that we continue to locate and add to the collection.

Much of the non-legal material in this collection is based on the magnificent holdings of the Buffalo Public Library. Its rare book collection contains hundreds of nineteenth century pamphlets and books on slavery. The cooperation of that library and its staff helped make this project possible.

I end this introduction on a personal note. In 1974 I began a doctoral dissertation on slavery and law. I spend months sitting in the University of Chicago Law Library looking at volumes of printed reports, trying to find every slave case decided by a northern court (there were hundreds and hundreds of them). I searched for obscure statutes from the 18th and early 19th centuries. I looked for law review articles in such long-forgotten journals as the *Monthly Law Reporter* and the *Western Legal Observer*. If only **Slavery in America and the World: History, Culture & Law** had existed then! I would still have had to read and analyze everything. I would have had to frame my search questions carefully. But my search for source materials would have taken months instead of nearly two years. With this library, future scholars can spend more time reading and analyzing the sources, and much less time looking for them.

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