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Slavery in North America

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Virginians on the Missouri Compromise

The Missouri Question was one of the most divisive issues of the early nineteenth century, with both North and South aware that the consequences of the decision went far beyond the admission of a single state. The central issue regarding the admittance of Missouri, whether it should come into the Union as a free state or slave state, had implications for the political balance in the Congress and for the future of the extension of slavery. This paper focuses specifically on the views of Virginians regarding the Missouri Question, and finds that they are opposed the admittance of *any* state with the condition that slavery be prohibited**.** Their arguments can be grouped into three basic categories: constitutional issues, unequal treatment of states, and a fundamental view about slavery and the African race. This paper analyzes three primary sources from Virginians; one being the resolutions of the Virginia Legislature, and two being the speeches of Representatives Alexander Smyth and James Barbour.

The Virginia Legislature and Mr. Barbour argued that the power of Congress to admit states does not give Congress the power to stipulate conditions for the entrance of states. Article 4, section 3 of the U.S. Constitution reads “New States may be admitted by the Congress into this Union.”[[1]](#footnote-1) The Legislature argued that “the power to do that act, would not imply the power to do anything else,” meaning that Congress would be overstepping its given powers if it were to prescribe conditions.[[2]](#footnote-2) Mr. Barbour referenced the Articles of Confederation, which guaranteed that powers not given to the Federal Government would be reserved to the states. Because the men who wrote the Constitution understood that maxim, when they wrote “New States” in Article IV, section 3, they had “no doubt as to the power which had been exercised and retained by the states.”[[3]](#footnote-3) Mr. Barbour was trying to counter the notion that there existed some special distinction between the rights of people in existing states and those in new states. He concurs with the Legislature, saying that “there is nothing to justify the exercise of such a power by implication, if implication were allowable.”[[4]](#footnote-4) They are on solid constitutional footing, as Congress has neither explicit or implicit power in this case.

Proponents of admitting Missouri with conditions argued that the Commerce Clause gives Congress the power to regulate slavery, but all three sources refute this claim. Article 1, section 8 states that Congress can “regulate Commerce with foreign Nations, and among the several States.”[[5]](#footnote-5) The Virginia Legislature countered the idea that this could apply to regulating slavery in a single state, even under the pretenses of agriculture. The consequences of such logic would mean Congress could “authorise the sale of slaves, in the State of Massachusetts, against the laws of that State.”[[6]](#footnote-6) Even if Congress could regulate the sale of slaves in between states, a total prohibition would be an overreach. Mr. Barbour went even further, saying that slavery is not commerce at all, because a man’s slaves are “a part of his family” for whom he has an “affectionate regard.”[[7]](#footnote-7) Barbour again referenced the Articles of Confederation, saying that the power to regulate commerce in the Constitution was intended to prevent unfair regulations between the states that occurred under the Articles.[[8]](#footnote-8) He believed that even if Congress could identify slavery as commerce, the total prohibition of it would go against the intention of the Constitution. The third clause that Northerners employed lies in Article 4, section 3, which instills “Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States.”[[9]](#footnote-9)

The Virginians contended that the power of Congress to regulate territories did not allow them to prevent slavery in Missouri. The Legislature argued that such an action would go against the spirit of the Constitution; to hold territories for an extended period under different laws than the states would be the “colonial bondage against which they themselves had so lately revolted.”[[10]](#footnote-10) They argued that territories should become states as soon as they reach “maturity” and at that point they become constitutionally equal to all other states, meaning Congress ceases to have the same authority it had when that state was formerly a territory.[[11]](#footnote-11) Thus even if Congress could have prevented slavery in the territory of Missouri, once it became a state, Missouri could invalidate that condition in its own state constitution.[[12]](#footnote-12) Mr. Smyth strengthened this argument by stating that the Constitution only allows Congress to regulate territory belonging to the United States, but not the property of those who reside in the territories.[[13]](#footnote-13) The second clause of Article 4, section 3 is the Northerners strongest argument that Congress has jurisdiction over slavery in Missouri, but that jurisdiction would end if Missouri became a state.

Mr. Smyth holds that Congress has no power to regulate slave property. Firstly, because the Constitution never explicitly gives power over slavery to the Federal government, it must be reserved to the states. Secondly, he argued that the Constitution recognizes slave property in the three-fifths clause.[[14]](#footnote-14) Therefore the fifth Amendment’s guarantee of due process means that Congress “cannot force a proportion of the people to emancipate their slaves.”[[15]](#footnote-15) Mr. Smyth was referring to a clause of the Missouri Bill which stipulated that the children of slaves already residing in Missouri would be freed at age 25.

Mr. Barbour disagreed with the argument of Northerners that the clause that prevented Congress from touching the slave trade before 1808 allowed them to regulate slavery after 1808. Mr. Barbour responded, “Do gentlemen mean to say that all power interdicted by the 9th section [Article 1] would belong to Congress, had not such restriction been inserted?”[[16]](#footnote-16) This logic would allow Congress any power not explicitly prohibited, directly contradicting the Tenth Amendment. The Virginia Legislature described the consequences of such logic: “a House of Commons, a House of Lords, and an hereditary Monarch!”[[17]](#footnote-17)

The proponents of banning slavery in Missouri argued that the Northwest Ordinance and the Declaration of Independence gave them necessary precedent to enact their proposed legislation. Mr. Smyth held that the Northwest Ordinance of 1887, which banned slavery in the territories to be settled was “an act of illegitimate power,” and therefore Ohio, Illinois, and Indiana have no obligation to obey it.[[18]](#footnote-18) He believed that the Articles of Confederation never gave the Federal government the ability to impose that condition on the territories. Mr. Barbour added that the people of those territories never wished to hold slaves so there was no dispute, and therefore this case cannot be used as precedent.[[19]](#footnote-19) He also countered the idea that the Declaration of Independence’s proclamation that “all men are created equal” could ever have applied to slaves, because slavery existed in all of the signatories’ states.[[20]](#footnote-20) Smyth acknowledged the significance of the Declaration, but denied that it carries legal power.[[21]](#footnote-21)

The men of Virginia repudiated the notion that there could be any constitutional backing to banning slavery in Missouri, and insisted that such an action would be fundamentally unequal. Mr. Barbour claimed that when a new state is admitted, it is “placed on the most perfect equality with the other states,” including having all of the responsibilities of the old states.[[22]](#footnote-22) One aspect of this equality is the “right to fashion her government according to the will” of the Missourians and the restriction on slavery would deny Missouri that right.[[23]](#footnote-23) This relates to why the ban on slavery in Indiana or Ohio could not count as precedent; the people of that state formed constitutions that barred slavery anyway, so it did not infringe upon their rights. Mr. Smyth concurred, asking, “will their [Indiana’s and Ohio’s] representatives admit that those states are less free to decide on this question than other states?”[[24]](#footnote-24) The question was obviously rhetorical, and he was challenging the other representatives to accept their own inequality before they could impose it upon others. He added that the very definition of being in the Union is to be under the law of the Constitution, so any state admitted is equal under law.[[25]](#footnote-25)

In addition to the Constitution, the Louisiana Purchase Treaty necessitated that new states be treated equally. The Virginia Legislature cited the third article of the treaty, which stipulated that the people of new states be given “the enjoyment of all the rights, advantages and immunities, of citizens of the United States.”[[26]](#footnote-26) Among those rights are the ability to form a state constitution and regulate slavery. Mr. Smyth warned that the breach of this treaty could lead to a conflict with France, and would damage the honor of the U.S.[[27]](#footnote-27) He argued that the U.S. is bound by its own Constitution to obey treaties, and this one stipulated equal treatment of states created out of the Louisiana Purchase.

Mr. Smyth and Mr. Barbour did not ask that Missouri enter as a slave state, but instead suggested that the people of Missouri be given the choice. Mr. Barbour brought up the hypothetical situation that Missouri could accept the condition of banning slavery because of the desire to enjoy the other benefits of statehood. He challenged Northerners to “Send out your go-carts of pamphlets…pronounce before them your long Jeremiads against slavery” and then let the people of Missouri decide for themselves.[[28]](#footnote-28) He asked, “What have you to fear from the good sense of the people of Missouri?”[[29]](#footnote-29) Mr. Smyth concurred, saying that the people of Missouri may well come to the same conclusion that the North desired to impose.[[30]](#footnote-30) This led Barbour and Smyth to suspect that the North was not just seeking to curtail slavery but to enlarge their own political power.

Mr. Barbour and Mr. Smyth made compelling arguments that the Northerners did not truly desire to help slaves become free, but were selfishly pursuing a majority in Congress. Mr. Smyth said, “if the future freedom of blacks is your real object, and not a mere pretence” then why not free slaves in the District of Columbia, where Congress has “undoubted power to exercise exclusive legislation?”[[31]](#footnote-31) Mr. Barbour even came close to threatening the North by proclaiming “Sir, there is a point where submission becomes a crime, and resistance is a virtue.”[[32]](#footnote-32) He doubted the earnestness of Northerners’ charitable intentions, because Southerners would have to deal with the repercussions of a highly concentrated slave population that was barred from expansion. He contended that if slavery could not spread, the concentration of blacks would threaten the white population. The South, he claimed, had always “held our brothers of the East as ourselves,” sacrificing their own self-interest for the national good.[[33]](#footnote-33) Mr. Barbour worried that if the North and the South become unequal politically, the North would continue to impose laws hostile to the South.

The two Representatives share their fundamental views about slavery and the African race to bolster their position. Firstly, both men believed that slavery was natural, and so resented the Northern opposition to the institution. Mr. Smyth refered to slaves as part of the family; “the nurse who has fed his children from her breast, the faithful man who as long attended on his person…”[[34]](#footnote-34) To deny a man the ability to take his family into Missouri would be unjust. Mr. Barbour reminded his fellow men that slavery in Ancient Greece and Rome was much worse than it was in the United States, and yet that civilization achieved greatness.[[35]](#footnote-35) He did admit that there was a “preponderance” of evil in the institution of slavery, yet “no remedy, even plausible, has been suggested” to mend it.[[36]](#footnote-36) He ended his speech by proclaiming that God has allowed slavery to exist thus far, and until he “will raise up some Moses to be their deliverer,” slavery would continue.[[37]](#footnote-37)

Both Virginians feared the consequences of an overly concentrated slave population. Mr. Smyth asserted that masters were “desirous to improve the condition of their slaves, by removing them to the fertile and extensive plains of the west.” To prevent expansion would be “extreme cruelty to the blacks,” and would “cause their chains to be rendered more weighty” in order to protect the citizens. He argued that slave owners who own just a few slaves treated them better than did large owners, and the concentration of slaves would lead to larger plantations. [[38]](#footnote-38) Smyth said that the policy of dispersion worked for Constantine and the Jews, and would work equally for the United States and the dispersion of African slaves.[[39]](#footnote-39) At the heart of this fear was the memory of the slave revolt in St. Domingo, Haiti, where slaves were “thirsting for human blood.”[[40]](#footnote-40) Even if they were freed peacefully, slaves would be “savages in the midst of society…ignorant of the duties of life…without the benefits of subordination.”[[41]](#footnote-41) To him, blacks and whites could not live peacefully together, so slavery was necessary.

While the arguments of the Virginians are quite convincing, they are not foolproof and they contain an obvious bias. The compromise that resulted from this debate revealed that both sides held political power above the Constitution or helping slaves: The South accepted the ban on slavery above a certain latitude despite arguing that the government had no right to do that, and the North accepted the existence of slavery in Missouri despite a professed hatred for the institution.[[42]](#footnote-42) The Virginians’ basic view that slavery was not morally wrong allowed them to identify slaves as both property and family, and thus were free from government regulation. Although the racial argument of these men has been disproved by the passage of time, their constitutional and legal grounds were quite strong. It would be a Congressional overreach to impose conditions on Missouri’s entrance, and the Louisiana Purchase Treaty was binding. The legal structures protecting slavery were so deeply embedded that only a constitutional change could abolish it. That did not bode well for the future of a Union that would become increasingly divided on the issue of slavery and its expansion.

1. US Constitution, art. 4, sec. 3, cl. 1 [↑](#footnote-ref-1)
2. Virginia Legislature, Preamble and Resolutions on the Missouri Question, February 3, 1820, America’s Historical Imprints, 8 [↑](#footnote-ref-2)
3. Speech of Mr. J. Barbour, of Virginia, on the Restriction of Slavery in Missouri, 16th Congress, 1st sess., January 31, 1820, S., 9 [↑](#footnote-ref-3)
4. Barbour, 10 [↑](#footnote-ref-4)
5. US Constitution, art. 1, sec. 8, cl. 3 [↑](#footnote-ref-5)
6. Virginia Legislature, 22 [↑](#footnote-ref-6)
7. Barbour, 8 [↑](#footnote-ref-7)
8. Barbour, 8 [↑](#footnote-ref-8)
9. US Constitution, art. 4, sec. 3, cl. 2 [↑](#footnote-ref-9)
10. Virginia Legislature, 19 [↑](#footnote-ref-10)
11. Virginia Legislature, 20 [↑](#footnote-ref-11)
12. Virginia Legislature, 22 [↑](#footnote-ref-12)
13. Smyth, 14 [↑](#footnote-ref-13)
14. Smyth, 3 [↑](#footnote-ref-14)
15. Smyth, 9 [↑](#footnote-ref-15)
16. Barbour, 5-6 [↑](#footnote-ref-16)
17. Virginia Legislature, 17 [↑](#footnote-ref-17)
18. Smyth, 14-15, An Ordinance for the government of the Territory of the United States northwest of the River Ohio, July 13, 1787, <https://www.ourdocuments.gov/doc.php?doc=8&page=transcript>, art. 6. [↑](#footnote-ref-18)
19. Barbour, 11 [↑](#footnote-ref-19)
20. Barbour, 14 [↑](#footnote-ref-20)
21. Smyth, 16 [↑](#footnote-ref-21)
22. Barbour, 9 [↑](#footnote-ref-22)
23. Barbour, 10 [↑](#footnote-ref-23)
24. Smyth, 15 [↑](#footnote-ref-24)
25. Smyth, 21 [↑](#footnote-ref-25)
26. Virginia Legislature, 30 [↑](#footnote-ref-26)
27. Smyth, 19 [↑](#footnote-ref-27)
28. Barbour, 13 [↑](#footnote-ref-28)
29. Barbour, 13 [↑](#footnote-ref-29)
30. Smyth, 28 [↑](#footnote-ref-30)
31. Smyth, 9-10 [↑](#footnote-ref-31)
32. Barbour, 18 [↑](#footnote-ref-32)
33. Barbour, 20-22 [↑](#footnote-ref-33)
34. Smyth, 23 [↑](#footnote-ref-34)
35. Barbour, 23-24 [↑](#footnote-ref-35)
36. Barbour, 24-25 [↑](#footnote-ref-36)
37. Barbour, 25-26 [↑](#footnote-ref-37)
38. Smyth, 24 [↑](#footnote-ref-38)
39. Smyth, 25 [↑](#footnote-ref-39)
40. Smyth, 32-34 [↑](#footnote-ref-40)
41. Smyth, 29-30 [↑](#footnote-ref-41)
42. *Missouri Compromise*. Primary Documents in American History, <https://www.loc.gov/rr/program/bib/ourdocs/Missouri.html>. (Accessed May 8, 2017) [↑](#footnote-ref-42)