

## 15

## Equality

---

 [Volume 1, Page 561]

## CHAPTER 15 | Document 56

**St. George Tucker, A Dissertation on Slavery, in Blackstone's Commentaries 2:App. 31--32, 35--43, 54--55, 68--69, 74--81 (1803)**

1796

In the preceding inquiry into the absolute rights of the citizens of united America, we must not be understood as if those rights were equally and universally the privilege of all the inhabitants of the United States, or even of all [Volume 1, Page 562] those, who may challenge this land of freedom as their native country. Among the blessings which the Almighty hath showered down on these states, there is a large portion of the bitterest draught that ever flowed from the cup of affliction. Whilst America hath been the land of promise to Europeans, and their descendants, it hath been the vale of death to millions of the wretched sons of Africa. The genial light of liberty, which hath here shone with unrivalled lustre on the former, hath yielded no comfort to the latter, but to them hath proved a pillar of darkness, whilst it hath conducted the former to the most enviable state of human existence. Whilst we were offering up vows at the shrine of liberty, and sacrificing hecatombs upon her altars; whilst we swore irreconcilable hostility to her enemies, and hurled defiance in their faces; whilst we adjured the God of Hosts to witness our resolution to live free, or die, and imprecated curses on their heads who refused to unite with us in establishing the empire of freedom; we were imposing upon our fellow men; who differ in complexion from us, a *slavery*, ten thousand times more cruel than the utmost extremity of those grievances and oppressions, of which we complained. Such are the inconsistencies of human nature; such the blindness of those who pluck not the beam out of their own eyes, whilst they can espy a mote, in the eyes of their brother; such that partial system of morality which confines rights and injuries, to particular complexions; such the effect of that self-love which justifies, or condemns, not according to principle, but to the agent. Had we turned our eyes inwardly when we supplicated the Father of Mercies to aid the injured and oppressed; when we invoked the Author of Righteousness to attest the purity of our motives, and the justice of our cause<sup>1</sup>; and implored the God of Battles to aid our exertions in it's defence, should we not have stood more self convicted than the contrite publican! Should we not have left our gift upon the altar, that we might be first reconciled to our brethren whom we held in bondage? should we not have loosed their chains, and broken their fetters? Or if the difficulties and dangers of such an experiment prohibited the attempt during the convulsions of a revolution, is it not our duty to embrace the first moment of constitutional health and vigour, to effectuate so desirable an object, and to remove from us a stigma, with which our enemies will never fail to upbraid us, nor our consciences to reproach us? To form a just estimate of this obligation, to demonstrate the incompatibility of a state of slavery with the principles of our government, and of that revolution upon which it is founded, and to elucidate the practicability of it's total, though gradual abolition, it will be proper to consider the nature of slavery, its properties, attendants, and consequences in general; it's rise, progress, and present state, not only in this commonwealth, but in such of our sister states as have either perfected, or commenced the great work of it's extirpation; with the means they have adopted to effect it, and those which the circumstances and situation of our country may render it most expedient for us to pursue, for the attainment of the same noble and important end<sup>2</sup>.

.....

I. When a nation is, from any external cause, deprived of the right of being governed by it's own laws, only, such a nation may be considered as in a state of *political slavery*. Such is the state of conquered countries, and, generally, of colonies, and other dependant governments. Such was the state of united America before the

revolution. In this case the personal rights of the subject may be so far secured by wholesome laws, as that the individual may be esteemed free, whilst the state is subject to a higher power: this subjection of one nation, or people, to the will of another, constitutes the first species of slavery, which, in order to distinguish it from the other two, I have called political; inasmuch as it exists only in respect to the governments, and not to the individuals of the two countries. Of this it is not our business to speak, at present.

II. Civil liberty, according to judge Blackstone, being no other than natural liberty so far restrained by human laws, and no farther, as is necessary and expedient for the general advantage of the public, whenever that liberty is, by the laws of the state, further restrained than is necessary and expedient for the general advantage, a state of *civil slavery* commences immediately: this may affect the whole society, and every description of persons in it, and yet the constitution of the state be perfectly free. And this happens whenever the laws of a state respect the form, or energy of the government, more than the happiness of the citizen; as in Venice, where the most oppressive species of civil slavery exists; extending to every individual in the state, from the poorest gondolier to the members of the senate, and the doge himself.

This species of slavery also exists whenever there is an inequality of rights, or privileges, between the subjects or citizens of the same state, except such as necessarily results from the exercise of a public office; for the pre-eminence of one class of men must be founded and erected upon the depression of another; and the measure of exaltation in the former, is that of the slavery of the latter. In all governments, however constituted, or by what description soever denominated, wherever the distinction of rank prevails, or is admitted by the constitution, this species of slavery exists. It existed in every nation, and in every government in Europe before the French revolution. It existed in the American colonies before they became independent states; and notwithstanding the maxims of equality which have been adopted in their several constitutions, it exists in most, if not all, of them, at this day, in the persons of our *free* negroes and mulattoes; whose civil incapacities are almost as numerous as the civil rights of our free citizens. [Volume 1, Page 563] A brief enumeration of them, may not be improper before we proceed to the third head.

Free negroes and mulattoes are by our constitution excluded from the right of suffrage, and by consequence, I apprehend, from office too: they were formerly incapable of serving in the militia, except as drummers or pioneers, but of late years I presume they were enrolled in the lists of those that bear arms<sup>3</sup>, though formerly punishable for presuming to appear at a musterfield. During the revolutionary war many of them were enlisted as soldiers in the regular army. Even slaves were not rejected from military service at that period, and such as served faithfully during the period of their enlistment, were emancipated by an act passed after the conclusion of the war. An act of justice to which they were entitled upon every principle. All but housekeepers, and persons residing upon the frontiers, are prohibited from keeping, or carrying any gun, powder, shot, club, or other weapon offensive or defensive: Resistance to a white person, in any case, was, formerly, and now, in any case, except a wanton assault on the negroe or mulattoe, is punishable by whipping. No negroe or mulattoe can be a witness in any prosecution, or civil suit in which a white person is a party. Free negroes, together with slaves, were formerly denied the benefit of clergy in cases where it was allowed to white persons; but they are now upon an equal footing as to the allowance of clergy. Emancipated negroes may be sold to pay the debts of their former master contracted before their emancipation; and they may be hired out to satisfy their taxes where no sufficient distress can be had. Their children are to be bound out apprentices by the overseers of the poor. Free negroes have all the advantages in capital cases, which white men are entitled to, except a trial by a jury of their own complexion: and a slave suing for his freedom shall have the same privilege. Free negroes residing, or employed to labour in any town, must be registered; the same thing is required of such as go at large in any county. The penalty in both cases is a fine upon the person employing, or harbouring them, and imprisonment of the negroe. The migration of free negroes or mulattoes to this state is also prohibited; and those who do migrate hither may be sent back to the place from whence they came. Any person, not being a negroe, having one-fourth or more negroe blood in him, is deemed a mulattoe. The law formerly made no other distinction between negroes and mulattoes, whether slaves or freemen. But now the act of 1796, c. 2, which abolishes the punishment of death, except in case of murder, in all cases where any free person may be convicted, creates a most important distinction in their favour; slaves not being entitled to the same benefit. These incapacities and disabilities are evidently the fruit of the third species of slavery, of which it remains to speak; or, rather, they are scions from the same common stock: which is,

III. That condition in which one man is subject to be directed by another in all his actions, and this constitutes a state of *domestic slavery*; to which state all the incapacities and disabilities of civil slavery are incident, with the weight of other numerous calamities superadded thereto. And here it may be proper to make a short inquiry into the origin and foundation of domestic slavery in other countries, previous to it's fatal introduction into this.

Slaves, says Justinian, are either born such or become so. They are born slaves when they are children of bond women; and they become slaves, either by the law of nations, that is, by captivity; for it is the practice of our generals to sell their captives, being accustomed to preserve, and not to destroy them: or by the civil law, which happens when a free person, above the age of twenty, suffers himself to be sold for the sake of sharing the price given for him. The author of the Commentaries on the Laws of England thus combats the reasonableness of all these grounds: "The conqueror," says he, "according to the civilians, had a right to the life of his captive; and having spared that, has a right to deal with him as he pleases. But it is an untrue position, when taken generally, that by the law of nature or nations, a man may kill his enemy: he has a right to kill him only in particular cases; in cases of absolute necessity for self-defence; and it is plain that this absolute necessity did not subsist, since the victor did not actually kill him, but made him prisoner. War itself is justifiable only on principles of self-preservation; and therefore it gives no other right over prisoners but merely to disable them from doing harm to us, by confining their persons: much less can it give a right to kill, torture, abuse, plunder, or even to enslave, an enemy, when the war is over. Since, therefore, the right of *making* slaves by captivity, depends on a supposed right of slaughter, that foundation failing, the consequence drawn from it must fail likewise. But, secondly, it is said slavery may begin *jure civili*; when one man sells himself to another. This, if only meant of contracts to serve, or work for, another, is very just: but when applied to strict slavery, in the sense of the laws of old Rome or modern Barbary, is also impossible. Every sale implies a price, a *quid pro quo*, an equivalent given to the seller, in lieu of what he transfers to the buyer; but what equivalent can be given for life and liberty, both of which, in absolute slavery, are held to be in the master's disposal? His property, also, the very price he seems to receive, devolves, *ipso facto*, to his master, the instant he becomes a slave. In this case, therefore, the buyer gives nothing, and the seller receives nothing: of what validity then can a sale be, which destroys the very principles upon which all sales are founded? Lastly we are told, that besides these two ways by which slaves are acquired, they may also be hereditary; '*servi nascuntur*;' the children of acquired slaves are, '*jure naturae*,' by a negative kind of birthright, slaves also. . . . But *this, being built on the two former rights, must fall together with them.* If neither captivity, nor the sale of one's self, can by the law of nature and reason reduce the parent to slavery, *much less* can they reduce the offspring." Thus by the most clear, manly, and convincing reasoning does this excellent author refute [Volume 1, Page 564] every claim, upon which the practice of slavery is founded, or by which it has been supposed to be justified, at least, in modern times<sup>4</sup>. But were we even to admit, that a captive taken in a *just war*, might by his conqueror be reduced to a state of slavery, this could not justify the claim of Europeans to reduce the natives of Africa to that state: it is a melancholy, though well-known fact, that in order to furnish supplies of these unhappy people for the purposes of the slave trade, the Europeans have constantly, by the most insidious (I had almost said infernal) arts, fomented a kind of perpetual warfare among the ignorant and miserable people of Africa; and instances have not been wanting, where, by the most shameful breach of faith, they have trepanned and made slaves of the *sellers* as well as the *sold*. That such horrid practices have been sanctioned by a civilized nation; that a nation ardent in the cause of liberty, and enjoying it's blessings in the fullest extent, can continue to vindicate a right established upon such a foundation; that a people who have declared, "That *all men* are by nature *equally free* and *independent*," and have made this declaration the first article in the foundation of their government, should in defiance of so sacred a truth, recognized by themselves in so solemn a manner, and on so important an occasion, tolerate a practice incompatible therewith, is such an evidence of the weakness and inconsistency of human nature, as every man who hath a spark of patriotic fire in his bosom must wish to see removed from his own country. If ever there was a cause, if ever an occasion, in which all hearts should be united, every nerve strained, and every power exerted, surely the restoration of human nature to it's unalienable right, is such. Whatever obstacles, therefore, may hitherto have retarded the attempt, he that can appreciate the honour and happiness of his country, will think it time that we should attempt to surmount them.

. . . . .

Civil, or rather social rights, we may remember, are reducible to three primary heads; the right of personal security; the right of personal liberty; and the right of private property. In a state of slavery the two last are wholly abolished, the person of the slave being at the absolute disposal of his master; and property, what he is incapable, in that state, either of acquiring, or holding, to his own use. Hence it will appear how perfectly irreconcilable a state of slavery is to the principles of a democracy, which, form the *basis* and *foundation* of our government. For our bill of rights, declares, "that all men are, by nature *equally free*, and independent, and have certain rights of which they cannot deprive or divest their posterity . . . namely, the enjoyment of life and *liberty*, with the means of *acquiring* and *possessing property*." This is, indeed, no more than a recognition of the first principles of the law of nature, which teaches us this equality, and enjoins every man, whatever advantages he may possess over another, as to the various qualities or endowments of body or mind, to practise the precepts of the law of nature to those who are in these respects his *inferiors*, no less than it enjoins his *inferiors* to practise them towards *him*. Since he has no more right to insult *them*, than they have to injure him. Nor does the *bare unkindness of nature*, or of fortune condemn a man to a *worse* condition than others, as to the enjoyment of common privileges. It would be hard to reconcile reducing the negroes to a state of slavery to these principles, unless we first degrade them below the rank of human beings, not only politically, but also physically and morally. . . . The Roman lawyers look upon those only properly as *persons*, who are *free*, putting *slaves* into the rank of *goods* and *chattels*; and the policy of our legislature, as well as the practise of slave-holders in America in general, seems conformable to that idea: but surely it is time we should admit the evidence of moral truth, and learn to regard them as our fellow men, and equals, except in those particulars where accident, or possibly nature, may have given us some advantage; a recompence, for which they, perhaps, enjoy in other respects.

.....

The extirpation of slavery from the United States, is a task equally arduous and momentous. To restore the blessings of liberty to near a million of oppressed individuals, who have groaned under the yoke of bondage, and to their descendants, is an object, which those who trust in Providence, will be convinced would not be unaided by the Divine Author of our being, should we invoke his blessing upon our endeavours. Yet human prudence forbids that we should precipitately engage in a work of such hazard as a general and simultaneous emancipation. The mind of a man must in some measure be formed for his future condition. The early impressions of obedience and submission, which slaves have received among us, and the no less habitual arrogance and assumption of superiority, among the whites, contribute, equally, to unfit the former for *freedom*, and the latter for *equality*.

.....

"But why not retain and *"incorporate the blacks into the state?"* This question has been well answered by Mr. Jefferson, and who is there so free from prejudices among us, as candidly to declare that he has none against such a measure? The recent scenes transacted in the French colonies in the West Indies are enough to make one shudder with the apprehension of realizing similar calamities in this country. Such probably would be the event of an attempt to smother those prejudices which have been cherished for a period of almost two centuries. Many persons who regret domestic slavery, contend that in abolishing it, we must also abolish that scion from it, which I have denominated *civil* slavery. That there must be no distinction of rights; that the descendants of Africans, as men, have an equal claim to all civil rights, as the descendants of Europeans; and upon being delivered from the yoke of bondage have a right to be admitted to all the privileges of a citizen. . . . But have not men when they enter into a state of society, a right to admit, or exclude any description of persons, as they think proper? If it be true, as Mr. Jefferson seems to suppose, that the Africans are really an inferior race of [Volume 1, Page 565] mankind<sup>5</sup>, will not sound policy advise their exclusion from a society in which they have not yet been admitted to participate in civil rights; and even to guard against such admission, at any future period, since it may eventually depreciate the whole national character? And if prejudices have taken such deep root in our minds, as to render it impossible to eradicate this opinion, ought not so general an error, if it be one, to be respected? Shall we not relieve the necessities of the naked diseased beggar, unless we will invite him to a seat at our table; nor afford him shelter from the inclemencies of the night air, unless we admit him also to share our bed! To deny that we ought to abolish slavery, without incorporating the Negroes into the state, and admitting them to a full participation of all our civil and social rights, appears to me to rest upon a similar foundation. The experiment so

far as it has been already made among us, proves that the emancipated blacks are not ambitious of civil rights. To prevent the generation of such an ambition, appears to comport with sound policy; for if it should ever rear its head, its partizans, as well as its opponents, will be enlisted by nature herself, and always ranged in formidable array against each other. We must therefore endeavour to find some middle course, between the tyrannical and iniquitous policy which holds so many human creatures in a state of grievous bondage, and that which would turn loose a numerous, starving, and enraged banditti, upon the innocent descendants of their former oppressors. *Nature, time* and *sound policy* must cooperate with each other to produce such a change: if either be neglected, the work will be incomplete, dangerous, and not improbably destructive.

The plan therefore which I would presume to propose for the consideration of my countrymen is such, as the number of slaves, the difference of their nature, and habits, and the state of agriculture, among us, might render it *expedient*, rather than *desirable* to adopt: and would partake partly of that proposed by Mr. Jefferson, and adopted in other states; and partly of such cautionary restrictions, as a due regard to situation and circumstances, and even to *general* prejudices, might recommend to those, who engage in so arduous, and perhaps unprecedented an undertaking.

1. Let every female born after the adoption of the plan, be free, and transmit freedom to all the descendants, both male and female.
2. As a compensation to those persons, in whose families such females, or their descendants may be born, for the expence and trouble of their maintenance during infancy, let them serve such persons until the age of twenty-eight years: let them then receive twenty dollars in money, two suits of clothes, suited to the season, a hat, a pair of shoes, and two blankets. If these things be not voluntarily done, let the county courts enforce the performance, upon complaint.
3. Let all negroe children be registered with the clerk of the county or corporation court, where born, within one month after their birth: let the person in whose family they are born, take a copy of the register, and deliver it to the mother, or if she die, to the child, before it is of the age of twenty-one years. Let any negro claiming to be free, and above the age of puberty, be considered as of the age of twenty-eight years, if he or she be not registered as required.
4. Let all the negro servants be put on the same footing as white servants and apprentices now are, in respect to food, raiment, correction, and the assignment of their service from one to another.
5. Let the children of negroes and mulattoes, born in the families of their parents, be bound to service by the overseers of the poor, until they shall attain the age of twenty-one years. Let all above that age, who are not house-keepers, nor have voluntarily bound themselves to service for a year before the first day of February annually, be then bound for the remainder of the year by the overseers of the poor. To stimulate the overseers of the poor to perform their duty, let them receive fifteen per cent. of their wages, from the person hiring them, as a compensation for their trouble, and ten per cent. per annum out of the wages of such as they may bind apprentices.
6. If at the age of twenty-seven years, the master of a negro or mulattoe servant be unwilling to pay his freedom dues, above mentioned, at the expiration of the succeeding year, let him bring him into the county court, clad and furnished with necessaries as before directed, and pay into court five dollars, for the servant, and thereupon let the court direct him to be hired by the overseers of the poor for the succeeding year, in the manner before directed.
7. Let no negro or mulatto be capable of taking, holding, or exercising, any public office, freehold, franchise, or privilege<sup>6</sup>, or any estate in lands or tenements, other than a lease not exceeding twenty-one years. . . . Nor of keeping, or bearing arms<sup>7</sup>, unless authorised so to do by some act of the general assembly, whose duration shall be limited to three years. Nor of contracting matrimony with any other than a negro or mulattoe; nor be an attorney; nor be a juror; nor a witness in any court of judicature, except against, or between negroes and mulattoes. Nor be an executor or administrator; nor capable of making any will or testament; nor maintain any

real action; nor be a trustee of lands or tenements himself, nor any other person to be a trustee to him or to his use.

8. Let all persons born after the passing of the act, be considered as entitled to the same mode of trial in criminal cases, as free negroes and mulattoes are now entitled to.

The restrictions in this plan may appear to savour strongly of prejudice: whoever proposes any plan for the [Volume 1, Page 566] abolition of slavery must either encounter, or accommodate himself, to prejudice. . . . I have preferred the latter; not that I pretend to be wholly exempt from it, but that I might avoid as many obstacles as possible to the completion of so desirable a work, as the abolition of slavery<sup>8</sup>. Though I am opposed to the banishment of the negroes, I wish not to encourage their future residence among us. By denying them the most valuable privileges which civil government affords, I wish to render it their inclination and their interest to seek those privileges in some other climate. There is an immense unsettled territory on this continent<sup>9</sup> more congenial to their natural constitutions than ours, where they may perhaps be received upon more favourable terms than we can permit them to remain with us. Emigrating in small numbers, they will be able to effect settlements more easily than in large numbers; and without the expence or danger of numerous colonies. By releasing them from the yoke of bondage, and enabling them to seek happiness wherever they can hope to find it, we surely confer a benefit, which no one can sufficiently appreciate, who has not tasted of the bitter curse of compulsory servitude. By excluding them from offices, we may hope that the seeds of ambition would be buried too deep, ever to germinate: by disarming them, we may calm our apprehensions of their resentments arising from past sufferings; by incapacitating them from holding lands, we should add one inducement more to emigration, and effectually remove the foundation of ambition, and party-struggles. Their personal rights, and their property, though limited, would, whilst they remain among us, be under the protection of the laws; and their condition not at all inferior to that of the *labouring* poor in most other countries. Under such an arrangement we might reasonably hope, that time would either remove from us a race of men, whom we wish not to incorporate with us, or obliterate those prejudices, which now form an obstacle to such incorporation.

But it is not from the want of liberality to the emancipated race of blacks that I apprehend the most serious objections to the plan I have ventured to suggest. . . . Those slave holders (whose numbers I trust are few) who have been in the habit of considering their fellow creatures as no more than cattle, and the rest of the brute creation, will exclaim that they are to be deprived of their *property*, without compensation. Men who will shut their ears against this moral truth, that all men are by nature *free*, and *equal*, will not even be convinced that they do not possess a *property* in an *unborn* child: they will not distinguish between allowing to *unborn* generations the absolute and unalienable rights of human nature, and taking away that which they *now possess*; they will shut their ears against truth, should you tell them, the loss of the mother's labour for nine months, and the maintenance of a child for a dozen or fourteen years, is amply compensated by the service of that child for as many years more, as he has been an expence to them. But if the voice of reason, justice, and humanity, be not stifled by sordid avarice, or unfeeling tyranny, it would be easy to convince even those who have entertained such erroneous notions, that the right of one man over another is neither founded in nature, nor in sound policy. That it cannot extend to those *not in being*; that no man can in reality be *deprived* of what he doth not possess: that fourteen years labour by a young person in the prime of life, is an ample compensation for a few months of labour lost by the mother, and for the maintenance of a child, in that coarse homely manner that negroes are brought up: and lastly, that a state of slavery is not only perfectly incompatible with the principles of government, but with the safety and security of their masters. History evinces this. At this moment we have the most awful demonstrations of it. Shall we then neglect a duty, which every consideration, moral, religious, political, or *selfish*, recommends? Those who wish to postpone the measure, do not reflect that every day renders the task more arduous to be performed. We have now 300,000 slaves among us. Thirty years hence we shall have double the number. In sixty years we shall have 1,200,000: and in less than another century from this day, even that enormous number will be doubled. Milo acquired strength enough to carry an ox, by beginning with the ox while he was yet a calf. If we complain that the calf is too heavy for our shoulders, what will the ox be?

1. The American standard, at the commencement of those hostilities which terminated in the revolution, had these words upon it. . . .  
AN APPEAL TO HEAVEN!

2. The Editor [Tucker] here takes the liberty of making his acknowledgments to the reverend Jeremiah Belknap, D. D. of Boston, and to Zephaniah Swift, Esq. representative in Congress from Connecticut, for their obliging communications; he hath occasionally made use of them in several parts of this Lecture, where he may have omitted referring to them.
3. This was the case under the laws of the state; but the act of 2 Cong. c. 33, for establishing an uniform militia throughout the United States, seems to have excluded all but free white men from bearing arms in the militia.
4. These arguments are, in fact, borrowed from the Spirit of Laws. Lib. xv. c. 2.
5. The celebrated David Hume, in his Essay on National Character, advances the same opinion; Doctor Beattie, in his Essay on Truth, controverts it with many powerful arguments. Early prejudices, had we more satisfactory information than we can possibly possess on the subject at present, would render an inhabitant of a country where negroe slavery prevails, an improper umpire between them.
6. The Romans, before the time of Justinian, adopted a similar policy, in respect to their freed-men. Gibbon, vol. 1, 58.
7. See Spirit of Laws, 12, 15, 1. Blackst. Com. 417.
8. If, upon experiment, it should appear advisable to hasten the operation of this plan, or to enlarge the privileges of free negroes, it will be both easier, and safer so to do, than to retrench any privilege once granted, or to retard the operation of the original plan, after it has been adopted, and in part carried into execution.
9. The immense territory of Louisiana, which extends as far south as the lat. 25° and the two Floridas, would probably afford a ready asylum for such as might choose to become Spanish subjects. How far their political rights might be enlarged in these countries, is, however, questionable: but the climate is undoubtedly more favourable to the African constitution, than ours, and from this cause it is not improbable that emigrations from these states would in time be very considerable.

---

## The Founders' Constitution

Volume 1, Chapter 15, Document 56

<http://press-pubs.uchicago.edu/founders/documents/v1ch15s56.html>

The University of Chicago Press