Interpretation

A JOURNAL OF POLITICAL PHILOSOPHY

Winter 1997 *Volume 25 Number 2*

Interpretation

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Composition by Eastern Composition, Inc.,
Binghamton, N.Y. 13904 U.S.A.
Printed and bound by Wickersham Printing Co.,
Lancaster, PA 17603 U.S.A.

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William Lee Miller, *Arguing About Slavery: The Great Battle in the United States Congress* (New York: Alfred A. Knopf, 1996), x + 577 pp., $35.00.

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> [It] is this inconvenience [limits to majority will], which men of democracies find in forms, that makes them so useful to liberty, their principal merit being to serve as a barrier between the strong and the weak, the government and the governed. Thus democratic peoples naturally have more need of forms than other peoples, and naturally respect them less.
>
> Alexis de Tocqueville

Tocqueville wrote the foregoing as part of his well-known reflections on America. He believed that the passions of democracy could be restrained by adherence to the accepted forms of social life, including the constitutional forms of government. Some scholars today similarly believe that American democracy is most threatened by a democratic lack of respect for constitutional forms. Yet while democratic populism may be a problem, it is helpful to understand just what limitations there may be in looking to forms to provide direction in political life. For when we look to the past, we find a more complicated history. Even though Tocqueville's emphasis upon forms was laudable, it ignored one of the essential problems of the very regime he examined: the forms of that regime were themselves defective. That is, the United States Constitution partially sanctioned the existence of slavery. However sensible Tocqueville's concern about the need to restrain the excesses of democracy, the principal problem of American democracy during his time precisely centered upon the moral dilemma enshrined in the fundamental law or form of the Union. The period just after Tocqueville made his observations would witness the beginning of the great conflict over that moral dilemma. And while many in Tocqueville's time believed the Missouri Compromise to have solved the dilemma, it was not solved until the Thirteenth Amendment to the Constitution was passed in 1865 after a long and bloody civil war.

The period in question, the interval between the Nullification Crisis and the Mexican War, is often viewed as one of the more uneventful in American history. Yet the U. S. Congress, and especially the House of Representatives, underwent one of its more remarkable episodes: the debate over the infamous House "gag" rule, which prohibited the reception or consideration of petitions calling for the end of slavery or the slave trade. This debate brought to the fore

© INTERPRETATION, Winter 1998, Vol. 25, No. 2

the inescapable moral necessity of addressing the question of slavery and its relationship to America's constitutional republicanism. While Tocqueville certainly was aware of the problem of slavery, he did not recognize its enormity. And while his reflections provide great insight into the spirit of America, they simply miss the great debate to come in Congress, which would culminate in the firing on Fort Sumter a generation later. On the other hand, in *Arguing About Slavery: The Great Battle in the United States Congress*, historian William Lee Miller recounts the nine-year debate over the gag rule and shows how it indeed foreshadowed, perhaps providentially, the greater battle to come.

In a spirited and readable style, Miller tells the story of what otherwise might appear to be an arcane, obscure and forgettable parliamentary squabble. He argues that this drama, like the impending Civil War, cannot be understood apart from the questions of moral principle that reside at the heart of the American regime. Whatever compromises were made with slaveholders at the birth of the nation, such compromises did not include the question of territories and new states. These were, Miller notes, "every American's responsibility." The questions concerning which territories were to be admitted as slave states and which free states were, he explains, the "common problems of the whole nation, as much the responsibility of New York and Connecticut as of South Carolina and Georgia. Moreover, the territories and new states were the *future*. They were the counters in the contest over what the United States would become" (p. 181). The fundamental question confronting the Union, that of slavery in the territories, could not be easily answered by reference to the Constitution. Americans would have to find through republican means, rather than constitutional forms, the answer to that question.

While the ostensible issue in the debate was slavery in the District of Columbia, Miller is right to emphasize that the debate centered upon the question of republicanism: whether America's primary republican institution, the House of Representatives, would indeed be the proper place for deliberation about the "peculiar institution." Therefore, much of the story he tells concerns the debate over the right of petition, rather than slavery itself. Various Southern representatives—including such figures as James Henry Hammond and Henry Laurens Pinckney of South Carolina, Henry Wise of Virginia, and William Cost Johnson of Maryland, most directly or indirectly under the influence of John C. Calhoun—claimed to be preserving the constitutional forms of the regime by asserting slavery to be off limits as a topic of debate. They called for and won various versions of the gag, from Pinckney's 1836 resolution to Johnson's 1840 amendment to the House rules, which lasted until the final repeal of the gag in 1844. In opposition to the gags and always losing the votes (at least until 1844) were abolition sympathizers such as Joshua Giddings of Ohio and William Slade of Vermont. Motivated by their desire to end slavery entirely, and despite the Constitution's sanction of slavery in the states, they fought to allow the

abolition petitions to be received and considered as proper objects of republican debate.

To his great credit, Miller explains the often complicated parliamentary maneuvering which took place from session to session and Congress to Congress without foresaking the drama of the events described. (There is a very helpful appendix charting the chronology of debates and votes.) Indeed, Miller conveys to the reader the importance of understanding the relationship between parliamentary procedure and deliberation; how the former may help, as well as hinder, the latter. And he shows the importance of recognizing—as the slaveholders refused to recognize—that the only argument from constitutional *form* that in fact did not serve to destroy the Constitution itself required that the democratic spirit of the people be preserved. This meant that the means of expressing that spirit—freedom of petition, and of press and of the mails, which were also targeted by the slaveholders—be preserved.

The heroes of the story for Miller are not the petitioners themselves, those who, led by abolition leaders like William Lloyd Garrison and John Greenleaf Whittier, carried the antislavery fight forward as an overriding moral and religious imperative. In fact, Miller is critical of the "self-righteousness" of some of the abolitionists, particularly that displayed in writings such as Garrison's *Declaration of Sentiments* of the American Anti-Slavery Society. There the grievances of the Founding Fathers against the British are called " 'trifling in comparison with the wrongs and sufferings for whom we [the white abolitionists] plead. Our fathers were never slaves—never bought and sold like cattle. . . .' " Miller remarks that not only was it not very prudent to call the Founders' grievances "trifling," but that one may question such an approach "when the sufferings in comparison to which the founders' are judged to be trifling are those not of the declaration-signers themselves—who also have not been bought and sold like cattle—but of third parties—'those for whom we plead'—the moral prestige of whose suffering the signers of the document implicitly borrow for themselves" (p. 71). While certainly sympathetic to the cause of abolition, Miller displays a rare degree of moderation for a modern scholar examining American slavery when he rightly considers the political limitations of the abolition cause.

Miller finds his hero elsewhere, in the person of the former president and sage of the House, John Quincy Adams. And Adams truly is the hero of the story; the volume is worth reading simply for Miller's depiction of the republican nobility of Adams. Adams was the leader in the fight against the gag rule. As Miller recounts, Adams and other antislavery representatives presented countless petitions of different kinds that "challenged, evaded, or mocked the gag rules" (p. 351). Adams was the principal target of the original Pinckney gag in 1836 and, as a result of his defense of the right of petition, he would twice stand as the object of a motion for censure. But unlike Giddings and other

antislavery representatives, he never supported the abolition of slavery in the District (except perhaps after the end of the long struggle in 1844). He publicly reiterated his belief that abolishing slavery in the District would be impractical and privately directed the abolitionists to concentrate instead on halting the *spread* of slavery. As Miller remarks, "Adams was a stalwart beyond all others on the subject that was not concerned directly with slavery at all: the civil liberties that the slaveholders' program violated, in particular the right of petition" (p. 356).

But there was more to Adams's statesmanship. Miller points out Adams's deeper understanding of the barriers to emancipation: opinion throughout the Union needed to be changed in order to make abolition a reality sometime in the future. For even though civil liberty was a "great substantive value" for Adams, "he was fully aware, at the same time, of the strategic service its defense could render in unsettling the slave power" (p. 356). Miller notes that the best evidence for Adams's view in this regard came from his chief opponent in the exhausting conflict over the gags: Henry Wise. Wise would recount in 1855, after the death of Adams, that he "'had reason to know and to feel the wisdom and sagacity of that departed man.'" Adams had told him that the "'pulpit would preach, and the school would teach, and the press would print, among the people who had no tie and no association with slavery,'" until slavery would be gone from the Union. And Adams said "'again and again'" that "'he would not abolish slavery in the District of Columbia if he could; for he would retain it as a bone of contention—a fulcrum of the lever for agitation, agitation, agitation, until slavery in the states was shaken from its base.'" Wise concludes with the telling remark that, by 1855, Adams's "'prophecies have been fulfilled'" (p. 357).

But not all of the prophecies had come true by 1855. It was Adams's belief that, under the war power, slavery could be ended constitutionally, even in the slave states. This indeed would happen in the Civil War, particularly through Lincoln's Emancipation Proclamation. But civil war was foreshadowed by the Congress itself when, on December 20, 1837, the Southern representatives, led by Wise, "seceded" by vacating the House chamber. They did so in protest of Slade's motion to refer an antislavery petition to committee, with instructions to report a bill to abolish slavery in the District. Slade could make his motion because the House had not, at the start of this new Congress, renewed the gag resolution. The House would do so the very next day. But Miller remarks that, "There was in 1837–38, and for many years thereafter, an ominous cloud of potential violence surrounding the congressional deliberations. There were threats; there were altercations; there were already some who carried bowie knives into the House chamber itself" (p. 282). Indeed, just the previous November abolitionist Elijah Lovejoy was murdered by a proslavery mob while fighting to protect his printing press. A few months later Lincoln would make a memorable allusion to similar incidents in his speech on the "Perpetuation of

Our Political Institutions." Miller shows how the heart of those institutions, the House of Representatives, would continually be endangered by the moblike Southern representatives themselves.

Adams's defense of the right of petition was not unlike Lovejoy's defense of the press. Adams did not think that abolition was a practical alternative, but he understood the natural-right basis of freedom of speech, press and association, and of petition. He highlighted the natural-right basis of petitioning when, in February 1837, he presented to the House a petition signed by *slaves*. Assuming the petition called for abolition, Southern members flew into a rage. But it soon became apparent that the petition did not, in fact, call for abolition. Adams thus shifted the debate away from the gag to the more fundamental question of the right of any human beings, black or white, slave or free, to petition the government for a redress of grievances. Adams called this issue " 'the most important question that ever came before the House since its first origin.' " A petition was, he said, "a prayer, a supplication to a superior being—that which we offer up to our God; and if the Creator of the universe did not deny to the lowest, the humblest, and the meanest, the right of petition and supplication, were they to say they would not hear the prayer of these petitioners because they were slaves?" (p. 263). Adams, then, appealed to the underlying principle of the republic that, despite great differences among human beings, there are no such differences that legitimate the denial of basic natural rights held by all.

As Miller notes, Adams's strategy of appealing to high principle while not violating the specific gag resolution "caught his opponents in an uncomfortable bind." By appealing to the guarantee of the right of petition in the Bill of Rights, Adams highlighted the connection of that right to the *forms* of the regime, the very forms which the slave interest claimed as the legitimate source of its opinion. Adams "pushed the understanding of that right deep into the moral grounding of the nation, and even of human life; the right to cry for mercy to the possessors of power was 'the first and humblest right given from God to every human being' " (p. 269). This is to say that those forms should be understood in light of a universal human nature, which necessarily transcends the particular forms themselves. Like Lincoln, Adams joins the Constitution, the fundamental form of the regime, to the eternal rights of human nature.

Yet, the proslave position on the question of constitutional authority was firm: the constitutional right to petition for redress of grievances does not mean that one may petition to end slavery. This is so because, as Congressman Stanly of North Carolina remarked by way of a resolution in 1838, " 'slavery is denied by the citizens of the slaveholding States to be a 'grievance,' and was not so considered at the time of the formation of the Constitution' " (p. 419). According to the slaveholders' logic, because the Constitution sanctions slavery in certain states, it sanctions slavery simply; the right of slavery trumps the right of petition. It is not an accident, then, that the representatives from the slave states were more prone to vacate the House chamber in anger, more likely to

"secede" from the Union. They were more inclined to see the Constitution as a device to serve the slave interest: the sanction of slavery is amplified, the right of petition is circumscribed. When these tactics began to lose their persuasive appeal, the slaveholders, in their own minds, were left with no alternative but secession, whether symbolic or real.

In contrast, the antislavery position emphasized the plain meaning of the First Amendment: there is no explicit constitutional limitation on the content of any petition. That is, regardless of what the slaveholders think, it is the right of each person to state for himself what constitutes a grievance. Likewise, so Adams and his few allies in the House argued, it is the prerogative of the legislature to provide or not to provide any actual redress for the petitioner. Accordingly, the Constitution allows that the Congress may or may not outlaw slavery in the District or the territories if it so chooses, based upon its considered judgment of the issues at hand. The compromises of the Constitution are not meant to imply any fundamental legitimacy of slavery outside of the states in which it is legal.

But what is to be made of the sanction of slavery within the states? Because the institution was obviously sanctioned by the Constitution, the slaveholders claimed that allegiance to the federal charter required admission of slavery's justice. Antislavery members such as Adams, on the other hand, likewise respected the Constitution, but recognized its compromises as exceptions to its underlying principles. There is, however, a measure of truth to the claims of the slaveholders to the extent that it is a contradiction simultaneously to praise the Constitution and blame its sanction of slavery. Because of its sanction of slavery in the South, the Constitution itself was implicitly challenged by the petitions to abolish slavery in the District and the territories. Adams, of course, did not recognize this as a great problem. He simply believed that the positive law must be understood in light of the transcendent principles for the sake of which it is created. Nevertheless, Miller rightly emphasizes that the climax of the debate precisely centered upon the implicit abolitionist challenge to the Constitution.

The implicit challenge became explicit when, on January 24, 1842, in the course of offering many different kinds of petitions which attacked slavery but avoided the gag rule, Adams presented a petition from the people of Haverhill, Massachusetts, praying that the Union be dissolved. While not mentioning slavery itself, it was clear to everyone that the petitioners in this instance based their objection to the Constitution on its sanction of slavery anywhere in the Union (p. 431). In response to the presentation of the petition, Henry Wise formally motioned for a vote of censure against Adams, charging him with virtual treason. The ensuing "trial" lasted two weeks, with the late Chief Justice John Marshall's nephew Thomas Marshall, a Kentucky Whig, acting as the prosecutor. Adams defended himself, assisted by the abolitionist Theodore Weld.

As Miller notes, what is most distinctive about the trial was that "Adams rested his defense of the propriety of the petition on the Declaration of Independence" (p. 437). After Marshall had spoken, Adams remarked that he would wait to respond to the prosecution's argument. Instead, he would have the clerk of the House read into the record the first paragraph of the Declaration, with its principles culminating in the right of revolution. "The Haverhill petitioners," Miller explains, "had the same right as their forefathers to petition for the redress of grievances, and the same right and duty to propose to throw off such government as did not respect their fundamental rights" (pp. 437–38). Such rights, according to Adams, are the natural rights possessed by all men and which have priority over the particular forms of any particular regime. As Miller explains:

> Adams kept tying the current battle to the deepest principles of republican government—to the Declaration of Independence, as here in this extraordinary episode; to the ancient right of petition, antecedent to the American government and even to republican government; and to a cluster of other civil liberties fundamental to the form of government to which they were all devoted. (P. 438)

That cluster of other civil liberties included the right to habeus corpus and the right to a jury trial. But the basis of Adams's entire defense was his constant reference to the natural-right principles of the regime. The right of petition and all of the other civil rights that men enjoy under the republican form exist as positive law instruments of the "laws of nature and of nature's God." Without reference to such standards, Adams implies, there is no basis upon which the contradictions of any form of government may be resolved.

Moreover, just as Lincoln would later argue, Adams referred to the Declaration as the principal source for interpreting the Constitution. Given its compromises, the Constitution could only be revered if it was understood to be a vehicle for the bringing into effect of the higher law. Adams did not agree with the prayer of the petition to dissolve the Union; it was, he said, "not *yet* time" to abolish the Constitution (p. 438, emphasis added). At some time it might be, but not in 1842. Adams would continue to revere the Constitution because he understood its compromises with slavery to be exceptions to its underlying principles. As Miller writes, "there was a moral purpose underlying the Constitution and the nation that made slavery fundamentally, morally illegitimate." And while this doctrine was barely acceptable enough in 1842 to prevent Adams's formal censure (it would not be strong enough to save Giddings), it would, eventually, "run through the politics of the 1850s, be articulated supremely by Abraham Lincoln as a politician and a president, and finally be made explicit in constitutional law in post–Civil War amendments to the Constitution" (p. 448).

Throughout the volume, Miller carries two symbolic themes. First, he shows

the moral, political and spiritual connections between the battle over the gag and the battles of the Civil War. And what ties the two together is the central place of the Declaration for understanding the relationship between slavery and the Constitution. Miller points out that there were many conventions and precedents to support the antislavery interpretation of the laws, but that "in the distinctively American setting there was another grounding for the principle that freedom was the universal premise and norm, and this ground had the solidity of a specific and honored American document: the Declaration of Independence, with its sweeping statement of truths we hold to be self-evident" (p. 448).

Second, Miller shows the understanding of statesmanship shared between John Quincy Adams and Abraham Lincoln. This connection, too, would have its basis in the Declaration and its principles. While both emerged from the Federalist-Whig party tradition, Adams and Lincoln came from very different backgrounds: the former from the first family of New England and American politics, the latter from, in the words of Woodrow Wilson, the "white trash" setting of the frontier. But it is their statesmanship, grounded in the principled interpretation of constitutional forms and positioned between the opposed claims of slavery and abolition, that joins the two men together. Miller beautifully ends this fine volume with reference to the passing of the torch, as it were, upon Adams's death while still a member of the House in 1848:

> It is altogether fitting and proper, for the purposes of the inner history and collective memory of the American people, that on the day that Adams fell there was seated, in a not very good seat in the back row of the House chamber, a young Whig congressman from Illinois serving his first and only term, a messmate of Joshua Giddings at Mrs. Sprigg's lodging house, Abraham Lincoln. (P. 514)