

SLAVERY, STATES' RIGHTS, AND THE COMING OF THE CIVIL WAR

The growth of slavery and the cotton kingdom

- 1607-1790, good lands in southern states lead to the rise of large-scale commercial agriculture (tobacco, indigo, rice) that is labor-intensive, benefiting from slavery—important to Southern economy
- 1787: U.S. Constitution explicitly recognizes and protects the legality of slavery
 - **implicitly recognizes that whether or not slavery exists is up to each individual state--NOT the federal government**
 - Article I, Section 2, Clause 3: A slave counts as three-fifths of a person for purposes of setting apportionment of taxes among states and a state's representation in the U.S. House of Representatives (**the "Three-Fifths" Clause**)
 - Article I, Section 9, Clause 1: Congress may not ban the importation of slaves into the U.S. until 1808
 - Article IV, Section 2, Clause 3: A slave fleeing into another state (for instance, a free state) must be returned to his master
 - The Constitution's authors are too squeamish to use the word "slaves" in these provisions; the Constitution uses euphemisms instead
- 1793, **Eli Whitney** invents "Cotton Engine", i.e., **cotton gin**, which deseeded cotton easily—this makes large-scale cotton production economically feasible for the first time
 - as a result, the amount of cotton production, and thus the slave population, expands dramatically over the next half-century; cotton becomes the most important cash crop of the South by far
- 1793-1860:
 - most southern whites own no slaves at all
 - most slave-owners own fewer than ten slaves
 - large-scale plantations are the exception, not the rule.
- Nevertheless, after 1793, cotton becomes the cornerstone of the Southern (and to an extent the national) economy, with slavery being the cornerstone of cotton production

The early emergence of the states' rights theory

- definition
 - **States' rights**, or **state sovereignty**, is generally the argument that the United States consists of states that retain their full sovereignty, which the federal government may not violate
 - Based on traditional revolutionary fear of a powerful foreign government in which a state has no practical representation (e.g., London 1763-1776)
 - It was a major doctrine before 1865; only a minor and restricted one since 1865

- Generally appealed to by a geographical minority that
 - has solid control over a state governments but
 - a relatively small voice in Congress or national popular support
 - reason: it's easier to muster enough strength to control a state government than the national government
- 1798, in response to the **Alien and Sedition Acts**, which many Republicans claim to be unconstitutional, Thomas Jefferson and James Madison secretly write the **Virginia and Kentucky Resolutions** (adopted by the legislatures of those states)
 - The federal government is the creature of the states
 - The states are the ultimate interpreters of the meaning of the Federal Constitution
 - when the federal government acts unconstitutionally, a state government may interpose itself between its people and nullify the federal law in question
- 1815, in response to the War of 1812, New England Federalist commercial interests badly damaged in economic terms by the War of 1812 meet in the **Hartford Convention** in Connecticut
 - Convention delegates vote to present their grievances to Congress
 - Some delegates subscribe to the principle of **secession**—the formal withdrawal of a state from the Union

The rise of the anti-slavery movement; states' rights becomes a defense of slavery, 1820-1860

- 1819-20, Missouri Crisis
 - Missouri, a territory that allows slavery, asks to become a state
 - Northern representative James Tallmadge introduces provision calling for gradual end of slavery in Missouri as a condition to admission to statehood
 - **Tallmadge Amendment** causes first sectional North-South vote in Congress (all Northerners vote in favor, all Southerners vote against)
 - Result: Congress reaches a solution called the **Missouri Compromise**
 - Missouri becomes a state with no prohibition on slavery
 - Maine comes into the Union as a free state (thus preserving the balance of free state/slave state power in the U.S. Senate)
 - No slavery allowed in Louisiana Territory north of 36°30'
 - Problem averted for now but forebodes further conflicts over slavery

- **Ultimate Southern fear: that one day enough free states will come into Union to be able to amend Constitution prohibiting slavery nationwide**
 - **This must happen by constitutional amendment, which requires approval of $\frac{3}{4}$ of the states; Congress can't end slavery in states merely by passing a law because it lacks the power to do so**

- 1828, in response to a high federal tariff (tax on imports) that hurts Southerners' economy and buying power, Vice-President **John C. Calhoun** of South Carolina secretly writes the **South Carolina Exposition and Protest**, adopted by the South Carolina legislature
 - The most comprehensive and logical development of the states' rights theory ever penned (except for some later writings of Calhoun)
 - Written in response to high tariff, but also in light of Southern fears about further Tallmadge-style attacks on expansion of slavery
 - Calhoun's theory:
 - States existed long before the federal Constitution
 - Delegates of state governments wrote the federal Constitution
 - Each state freely voted to ratify the Constitution and join the Union
 - The federal government created by the states is a government of limited powers, exercising only the powers that the states gave it
 - If Congress passed a law that it lacked the power to pass (such as, Calhoun argues, a high regulatory tariff), a state government can **nullify** the law, banning its enforcement in that state
 - If Congress still maintains that it has the power to pass such a law, the objecting state can then **secede**, i.e., withdraw from the Union by repealing its ratification of the Constitution, leaving it an independent state (i.e. a state in the international law sense)

- Nullification Crisis, 1832-33
 - 1832, Congress passes an even higher tariff than in 1828
 - South Carolina nullifies the tariff
 - Congress, spurred on by President Andrew Jackson, authorizes use of force to collect the tariff in South Carolina (the "**Force Bill**")
 - Before confrontation actually takes place, Congress passes a lower **compromise tariff of 1833**
 - South Carolina repeals its ordinance of nullification but nullifies the Force Bill

- Nominally a fight over tariff, but driven by possible Northern/federal threat to slavery as Northern population grows; fears of Abolitionists and Nat Turner (see below)
- Abolitionists
 - Relatively small number of Northern extremists who take the Declaration of Independence at its word (“All men are created equal”)
 - Best-known is **William Lloyd Garrison**
 - 1831, Garrison begins publishing Abolitionist newspaper *The Liberator*
 - 1831-1860, Garrison often burns copies of the Constitution in public because it legally protects slavery
 - 1831-1860, Garrison often proclaims “The compact which exists between the North and the South [i.e., the Constitution] is a covenant with death and an agreement with hell.”
- Nat Turner’s rebellion, 1831
 - Black uprising in Virginia in which 70 slaves butcher 58 whites
 - Greatly increases white Southerners’ fear of slave insurrection
 - Southern whites partly blame the agitation of Garrison and other Abolitionists for stirring up slaves via newspapers
- Personal liberty laws, 1840s
 - Northern states pass laws in an attempt to nullify federal fugitive slave law requiring return of fugitive slaves to masters in the South
 - Laws require masters and slave-catchers to follow legal procedures for claiming fugitive slaves (e.g., obtaining warrants for capture, etc.)
 - 1842, U.S. Supreme Court strikes these laws down as violating the Constitution’s fugitive slave provisions (*Prigg v. Pennsylvania*)
 - Northern states then re-enact revamped versions of the laws designed to make end-run around *Prigg* ruling
- Crises of 1850s
 - 1840s, Abolitionists and other Northerners argue that Manifest Destiny and Mexican War are designed to expand slavery and bring more slave states into Union, thus increasing pro-slave power in Washington
 - 1846, Representative **David Wilmot** of Pennsylvania proposes to ban slavery in any territory acquired by Mexico (the **Wilmot Proviso**)
 - The Proviso brings about a sectional crisis, solved by the congressional **Compromise of 1850**
 - Elements of compromise:
 - California becomes free state
 - No restrictions on slavery in other conquered territory of Southwest (i.e., Wilmot Proviso rejected)

- Slave trade abolished in Washington, D.C.
- Tough new **fugitive slave law of 1850** requires active cooperation of Northern citizens in returning fugitive slaves to the South—designed to put an end to the personal liberty laws once and for all
- **Dred Scott case, 1857**
 - Fifth Amendment reads in part: "No person shall . . . be deprived of life, liberty, or property, without due process of law . . ."
 - Dred Scott is a Missouri slave whose master takes him into free territory where slavery doesn't exist
 - Dred Scott claims he is therefore free and that he is entitled to his Fifth Amendment due process rights to liberty under the federal Constitution
 - His master claims that any territorial prohibition on slavery violates *his* (i.e., the master's) due process rights to property under the federal Constitution
 - Supreme Court finds that slaves aren't entitled to **due process** rights because they aren't full-fledged members of the community: they have "no rights which the white man is bound to respect,"
 - Court also prohibits any federal interference with slavery in the territories as violating masters' due process property rights

Rise of Republican Party and the Election of 1860

- 1854-1860, in response to warfare in **Kansas** between pro-free and pro-slave factions, Republican Party emerges
 - The central characteristic of the Republican Party is opposition to slavery (either its extension into new regions or its existence anywhere, depending on the particular Republican)
 - A purely sectional, Northern party with no support at all in the South
- 1860, Democratic Party splits between pro-slave and moderately anti-slave candidates, giving Republican Abraham Lincoln the White House
- the Confederate States of America

related topics that we won't cover unless I bring them up in class:

The Northwest Ordinance of 1787

the Essex Junto

Webster's Reply to Hayne

The Gag Rule

Wendell Phillips

Frederick Douglass

Popular sovereignty

Uncle Tom's Cabin

the Kansas-Nebraska Act
the Pottawatomie Massacre
the Lincoln-Douglas debates
John Brown's raid on Harper's Ferry