

“The Declaration of Independence, Constitutions, and the Atlantic Slave Trade, 1763-1787”

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Thomas Jefferson’s first draft of the Declaration of Independence condemned the “execrable trade” in African slaves, declaring the “rights of life & liberty” of the enslaved. While Jefferson removed this contentious clause to ensure passage of the Declaration in the Continental Congress, Americans also framed parallel state declarations and constitutions. Many of these “other declarations” banned slavery or the slave trade. Between 1763 and 1776, Americans in nine colonies passed nineteen declarations banning or limiting slave importation, drafted another four state constitutions banning slavery or the slave trade, and broadly proclaimed liberty in their state declarations of rights, which courts later used to free slaves. By 1787, they drafted another twenty-three nonimportation resolutions. This article asserts that these state declarations represent a neglected moment of antislavery constitutionalism in the American founding. The article offers three lessons from this moment. First, these state declarations shaped the antislavery clause in the Declaration’s first draft – Jefferson drew his clause mainly from Virginia nonimportation declarations he drafted in the House of Burgesses, and these declarations mirrored those of other colonies. The deletion of Jefferson’s clause from the Declaration encouraged the framers of later state constitutions and resolutions in Vermont, Massachusetts, and Pennsylvania to expressly ban slavery and declare liberty for the enslaved. Second, the state declarations, many banning or heavily taxing slave importation, foisted blame for the trade on George III, cut ties to British transatlantic slave traders, and thus gave domestic American slaveholders a monopoly on the trade. Underlying the bold antislavery language was protectionist trade policy. Third, state lawmakers used nonimportation and antislavery resolutions to limit the growth of the enslaved population in their states and thus decrease the risk of slave revolt. Delaware, Maryland, Virginia, and South Carolina, which contained the highest enslaved populations of the original states, alone account for nearly half of forty-two nonimportation resolutions passed between 1763 and 1787. By looking at these resolutions and the other, state declarations of rights, we see an antislavery legacy that supported both the rights of the enslaved and the commercial interests of slaveholders.

Thomas Jefferson's original draft of the Declaration of Independence included a clause blaming George III for the Atlantic slave trade. The clause claimed:

he has waged cruel war against human nature itself, violating it's [sic] most sacred rights of life & liberty in the persons of a distant people who never offended him, captivating & carrying them into slavery in another hemisphere, or to incur miserable death in their transportation thither, this piratical warfare, the opprobrium of *infidel* powers, is the warfare of the CHRISTIAN king of Great Britain, determined to keep open a market where MEN should be bought & sold, he has prostituted his negative for suppressing every legislative attempt to prohibit or to restrain this execrable commerce: and that this assemblage of horrors might want no fact of distinguished die, he is now exciting those very people to rise in arms among us, and to purchase that liberty of which he has deprived them, by murdering the people upon whom *he* also obtruded them; thus paying off former crimes committed against the *liberties* of one people, with crimes which he urges them to commit against the *lives* of another.¹

Continental Congress delegates from Georgia, South Carolina, and Northern slave-trading colonies forced Jefferson to delete the clause.² The ratified Declaration of Independence made no explicit mention of slavery.

Jefferson soon circulated the original draft, clause intact. He sent the draft Declaration to five readers, and in 1806, Thomas Ritchie, a Virginia printer, published the complete, original document, which Jefferson included in his autobiography fifteen years later.³ Founding-era abolitionists used this unredacted draft to advance an antislavery reading of the Declaration. Jefferson's editor, John Adams, lauded the original clause as a needed, "vehement philippic

¹ Excerpted from Jefferson's "original rough draft" Declaration which differs slightly in style, but not wording, from his draft in his "Notes of Proceedings of the Continental Congress." Thomas Jefferson, *Original Rough Draught*, I in THE PAPERS OF THOMAS JEFFERSON: 1760-1776 423 (Julian P. Boyd ed., 1950); Thomas Jefferson, *Notes of Proceedings in the Continental Congress, 7 June to 1 August 1776*, I in THE PAPERS OF THOMAS JEFFERSON: 1760-1776 , 317-18 (Julian P. Boyd ed., 1950).

² John Adams, *Letter to Timothy Pickering, August 6, 1822*, II in THE WORKS OF JOHN ADAMS, SECOND PRESIDENT OF THE UNITED STATES: WITH A LIFE OF THE AUTHOR, NOTES AND ILLUSTRATIONS , 514 (Charles Francis Adams ed., 1850).

³ James Parton, *Jefferson in the Continental Congress*, 29 THE ATLANTIC, 1872; D. R. Anderson, *Jefferson and the Virginia Constitution*, 21 THE AMERICAN HISTORICAL REVIEW 750, 750 (1916); Conor Cruise O'Brien, *Thomas Jefferson: Radical and Racist*, THE ATLANTIC (1996); GARRY WILLS, INVENTING AMERICA: JEFFERSON'S DECLARATION OF INDEPENDENCE 66 (2018).

against Negro Slavery” that clarified the Declaration’s antislavery meaning.⁴ Adams’ wife Abigail similarly objected to seeing that the “most Manly Sentiments in the Declaration are Expunged from the printed cobby [sic].”⁵ Benjamin Banneker, who may not have read the clause, nonetheless thanked Jefferson in a 1791 open letter for stating “the injustice of a state of slavery” in the Declaration.⁶ This public engagement, reprinting, and circulation popularized the deleted clause and an antislavery interpretation of the Declaration of Independence.⁷

Later abolitionists pitted the clause against a proslavery Constitution. Frederick Douglass was famously ambivalent about Declaration’s meaning, but in 1852, as federal agents used the Constitution’s Fugitive Slave Clause to recapture and transport runaway slaves, Douglass praised the founding generation for denouncing the slave trade “with burning words, from the high places of the nation, as an execrable traffic.”⁸ Free Soil abolitionists, who sought to exclude slavery from the western territories, found little help in the Constitution’s Territories Clause, but praised the founders for placing “blame upon the British King” for spreading slavery, as Lincoln put it in his Peoria Address.⁹

The semiquincentennial has brought the clause back to the public eye. In *The New York Times*’ 1619 Project, Nikole Hannah-Jones claimed that the antislavery clause’s deletion demonstrated the founders’ proslavery commitments.¹⁰ Looking to rehabilitate the founders, conservatives instead center the clause’s abolitionist rhetoric. The first Trump Administration answered Hannah-Jones with the 1776 Report, citing in the “original draft of the Declaration a strong condemnation of slavery.”¹¹ An American Enterprise Institute semiquincentennial report similarly lauds the deleted clause for highlighting the “evils of the slave trade.”¹² These

⁴ Adams, *supra* note 2 at 514.

⁵ Abigail Adams, *Letter to John Adams, July 13, 1776*, II in THE ADAMS PAPERS (L.H. Butterfield ed., 1963).

⁶ Benjamin Banneker, *Letter to Thomas Jefferson, August 19, 1791*, in AMERICAN ANTISLAVERY WRITINGS: COLONIAL BEGINNINGS TO EMANCIPATION, 131 (James G. Basker ed., 1791).

⁷ For the popular influence of these reprintings, see WILLS, *supra* note 3 at 66. Though note Wills finds “unlikely the claim the [Jefferson] regretted only, or even principally, the exclusion of the grievance based on slavery.”

⁸ See the U.S. Constitution Article IV, Section 2, Clause 3 and Frederick Douglass, *What to the Slave Is the Fourth of July?*, in THE ESSENTIAL DOUGLASS: SELECTED WRITINGS AND SPEECHES, 60–61 (Nicholas Buccola ed., 2016).

⁹ See the U.S. Constitution Article IV, Section 3, Clause 2 and Abraham Lincoln, *Peoria Speech, October 16, 1854*, I in ABRAHAM LINCOLN: SPEECHES AND WRITINGS (1989).

¹⁰ Nikole Hannah-Jones, *America Wasn’t a Democracy, Until Black Americans Made It One*, THE NEW YORK TIMES, Aug. 14, 2019.

¹¹ THE 1776 REPORT 10–11 (2021).

¹² Charles R. Kesler, *Editing the Declaration*, in NATURAL RIGHTS, THE COMMON GOOD, AND THE AMERICAN REVOLUTION (Yuval Levin, Adam J. White, & John Yoo eds., 2025), <https://america250.aei.org/volume/natural-rights-the-common-good-and-the-american-revolution/editing-the-declaration/>.

framings, left and right, emphasize the clause's antislavery language. Prominent scholars similarly view the clause as a bold – and perhaps earnest¹³ – statement of antislavery principle.¹⁴

These readings miss something. The deleted clause was one of many resolutions condemning the slave trade. Between 1763 and 1787, American colonial and state legislatures drafted forty-two resolutions limiting the Atlantic trade in enslaved people.¹⁵ Many of these resolutions taxing or banning the trade were written into the state constitutions and declarations of rights. These nonimportation resolutions served two purposes. First, they discouraged slave importation by British firms, letting Northeastern American-owned firms monopolize Atlantic importation and Southern slaveholders control the inland, domestic trade. Second, they slowed the growth of the enslaved population, especially in Southern colonies, thereby reducing the risk of slave revolt. Jefferson used Virginia's nonimportation language to draft the Declaration's deleted clause, which, as the Declaration's final clause and rhetorical crescendo, sought to defend individual colonies' legislative sovereignty to regulate the trade. The deleted clause, like other nonimportation resolutions, was not a statement of antislavery principle, so much as an argument for colonists' legal and trade sovereignty. This tempers antislavery readings of the clause and of colonial nonimportation resolutions generally.

Some scholars have advanced similar readings of the Declaration's redacted clause. Garry Wills, Donald Fehrenbacher, and Roger Wilkins each briefly elaborate the protectionist logic

¹³ JULIAN P. BOYD, *THE DECLARATION OF INDEPENDENCE: THE EVOLUTION OF THE TEXT* 37 (Gerald Gawalt ed., 1999); DAVID BRION DAVIS, *THE PROBLEM OF SLAVERY IN THE AGE OF REVOLUTION, 1770-1823* 173 (1999); DANIELLE ALLEN, *OUR DECLARATION: A READING OF THE DECLARATION OF INDEPENDENCE IN DEFENSE OF EQUALITY* 72–78 (2014); JILL LEPORE, *THESE TRUTHS: A HISTORY OF THE UNITED STATES* 99 (2018).

¹⁴ Some scholars have perhaps been more skeptical in the sincerity of Jefferson's antislavery language. Carl Becker describes the tension between the clause's earnest antislavery rhetoric and colonists' active participation in the trade, as does Michael Rogin. Richard Beeman suggests Jefferson's antislavery language was perhaps hypocritical, given his investment in the domestic slave trade. Pauline Maier and Gary Nash similarly doubt the sincerity of the clause's bold antislavery language. DUMAS MALONE, *JEFFERSON THE VIRGINIAN* 222 (1948); Michael Rogin, *The Two Declarations of American Independence*, 55 *REPRESENTATIONS* 13, 14–5 (1996); PAULINE MAIER, *AMERICAN SCRIPTURE: MAKING THE DECLARATION OF INDEPENDENCE* 119–23 (1997); GARY B. NASH, *THE UNKNOWN AMERICAN REVOLUTION: THE UNRULY BIRTH OF DEMOCRACY AND THE STRUGGLE TO CREATE AMERICA* 208–9 (2006); RICHARD BEEMAN, *THE PENGUIN GUIDE TO THE UNITED STATES CONSTITUTION: A FULLY ANNOTATED DECLARATION OF INDEPENDENCE, U.S. CONSTITUTION AND AMENDMENTS, AND SELECTIONS FROM THE FEDERALIST PAPERS* 15–6 (2010).

¹⁵ See the Appendix. Note that W.E.B. DuBois interprets the 1783 Treaty of Paris to allow the Confederation Congress to regulate the trade. This treaty is not included in this article's count of nonimportation measures. W. E. B. DUBOIS, *THE SUPPRESSION OF THE AFRICAN SLAVE-TRADE TO THE UNITED STATES OF AMERICA, 1638-1870* 157 (1896).

behind the Jefferson's language.¹⁶ Joseph J. Ellis, Alan Taylor, Roger Parkinson, and Merrill Peterson framed the clause as a means to prevent revolt by the enslaved.¹⁷ My own recent work situates the clause against Jefferson's prior Virginia nonimportation resolutions, albeit without addressing the dozens of other nonimportation and abolition resolutions of the era.¹⁸ And while there is some work on the early state constitutions' declarations of rights, there is little on their nonimportation language.¹⁹ This article is perhaps unique in interpreting the Declaration alongside early colonial and state antislavery resolutions as statements of legislative and trade sovereignty.

This article surveys all nonimportation resolutions drafted between 1763 and 1787. With the conclusion of the Seven Years' War in 1763, Parliament saddled American colonists with tariffs. In response, colonial legislatures declared sovereignty over taxes, including taxes on slave importation. Between 1763 and the framing of the U.S. Constitution in 1787, the colonies and states drafted forty-two measures taxing British slave importation.²⁰ This was the most active period of American regulation of the transatlantic slave trade.²¹ The ratification of the U.S. Constitution, including the Nonimportation Clause, in 1787 foreclosed subsequent congressional or state regulation of the trade.²²

The article proceeds in three parts. First, the article recounts the tariff and tax debates that sparked the American Revolution, detailing how colonial legislators attempted to impose tariffs on British slave imports between 1763 and 1776. Second, the article explains how in 1776, the

¹⁶ See also Taylor: "Jefferson blamed the British for imposing on the colonies a slave system that afflicted the slaves and endangered their masters." JOSEPH J. ELLIS, *AMERICAN SPHINX: THE CHARACTER OF THOMAS JEFFERSON* 61 (1998); Paul Finkelman, *Jefferson and Slavery: "Treason Against the Hopes of the World"*, in *JEFFERSONIAN LEGACIES* 181, 191–192 (Peter S. Onuf ed., 1993); ROGER WILKINS, *JEFFERSON'S PILLOW: THE FOUNDING FATHERS AND THE DILEMMA OF BLACK PATRIOTISM* 49 (2002); ALAN TAYLOR, *THE INTERNAL ENEMY: SLAVERY AND WAR IN VIRGINIA, 1772-1832* 22 (2013). DON E. FEHRENBACHER, *THE SLAVEHOLDING REPUBLIC: AN ACCOUNT OF THE UNITED STATES GOVERNMENTS RELATIONS TO SLAVERY* 16–17 (Ward M. McAfee ed., 2001); WILKINS, *supra* note at 49; WILLS, *supra* note 3 at 67.

¹⁷ Ellis, Wilkins, Taylor, and Peterson address this concern only in passing. MERRILL D. PETERSON, *THOMAS JEFFERSON AND THE NEW NATION: A BIOGRAPHY* 91–2 (1986); ELLIS, *supra* note 16 at 61; TAYLOR, *supra* note 16 at 22; ROBERT G. PARKINSON, *THE COMMON CAUSE: CREATING RACE AND NATION IN THE AMERICAN REVOLUTION* 258 (2016).

¹⁸ Robinson Woodward-Burns, *The Lost Clause: Reinterpreting the Declaration's Silence on the Atlantic Slave Trade*, *POLITY* 59 (2023).

¹⁹ See e.g. Donald S. Lutz, *The State Constitutional Pedigree of the U.S. Bill of Rights*, 22 *PUBLIUS* 19 (1992).

²⁰ For an account of nonimportation resolutions up to 1787, this article relies on DUBOIS, *supra* note 15 at Appendix A.

²¹ Between 1641, when Massachusetts attempted the first colonial regulation of the trade, and 1763, the colonies proposed seventy-three nonimportation measures. See *Id.*

²² See the U.S. Constitution, Article I, Section 9, Clause 1.

states declared independence by drafting state constitutions which included abolition and nonimportation clauses. Adams, Jefferson, and Franklin adopted language from state nonimportation resolutions, in some cases verbatim, into the draft Declaration. By 1780, all thirteen states had declared independence by drafting state constitutions. As the third section demonstrates, between 1780 and 1787, the American states established a nearly uniform regime against slave importation, allowing the framers of the U.S. Constitution to draft a similar clause in 1787. Together, these state resolutions, like the Declaration's redacted clause, protected the interests of American slaveholders and slave-traders as much as the interests of the enslaved.

I. Colonial Nonimportation Resolutions, 1763-1776

Colonies had long regulated the trade in enslaved people. Initially, colonial legislators wholly banned slavery.²³ These early bans often invoked natural law or Christian ethics. In 1641, Massachusetts became the first colony to regulate the Atlantic slave trade, forbidding enslavement of foreigners as a matter of natural law.²⁴ Consider also Connecticut's 1672 ban: "If any Man stealeth a Man or Man kinde, and selleth him, or if he be found in his hand, he shall be put to death. Exod. 21. 16."²⁵ But colonial lawmakers had limited administrative capacity to ban slavery outright. Instead, these legislators taxed slave importation, relying on enforcement by customs collectors, often appointed under Parliament's Navigation Acts.²⁶ By 1695, Maryland, for example, imposed a ten shilling duty on imported slaves, and in 1699, Virginia placed a twenty shilling duty on imported slaves and indentured servants, using the revenue to build a meetinghouse in Williamsburg for the colonial legislature.²⁷ These first tariffs thus funded early colonial infrastructure, expanding state capacity. They also aimed to reduce the enslaved population and the likelihood of slave revolt. A 1698 South Carolina act held: "the great number of negroes which of late have been imported into this Collony may endanger the safety thereof if

²³ Of fifteen nonimportation resolutions issued between 1641 and 1699, five taxed slave imports and ten banned importation outright. DUBOIS, *supra* note 15 at 138–140.

²⁴ From the Massachusetts statute: "There shall never be any bond slaverie villinage or Captivitie amongst vs, unles it be lawfull Captives taken in iust warres, & such strangers as willingly selle themselves or are sold to us." *Id.* at 138.

²⁵ *Id.* at 139.

²⁶ Pauline Maier, *Popular Uprisings and Civil Authority in Eighteenth-Century America*, in COLONIAL AMERICA: ESSAYS IN POLITICS AND SOCIAL DEVELOPMENT 423, 428–48 (Stanley Nider Katz ed., 1976); NASH, *supra* note 14 at 2–8.

²⁷ Note that in 1642, the Dutch New Netherland colony, the antecedent to New York, imposed a tariff, amended to apply specifically to Black slaves. The following year, the Dutch New Netherland colony, the antecedent to New York, imposed a tariff, amended to apply specifically to Black slaves. DUBOIS, *supra* note 15 at 138–140.

speedy care be not taken and encouragement given for the importation of white servants.”²⁸ To this end, the act granted ship captains thirteen pounds sterling for importing adult white male indentured servants, and twelve for those under sixteen years in age imported into the colony.²⁹

Throughout the eighteenth century, colonial lawmakers taxed slave importation. Colonial legislatures passed at least fifty-five nonimportation resolutions between 1700 and 1763, all but three of which included tariffs on imported enslaved people.³⁰ Half of the resolutions came from three colonies – Pennsylvania, an emerging center of transatlantic abolitionism, and Virginia and South Carolina, which held large enslaved populations in their tidewater and low country regions.³¹ A flurry of tariffs followed New York’s 1712 slave revolt. For example, in 1714, South Carolina lawmakers, having failed to increase the white population, sought instead to use a two-pound tariff on each imported Black slave to decrease the Black population. The act held that “the number of negroes do extremely increase in this Province, and through the afflicting providence of God, the white persons do not proportionably multiply, by reason whereof, the safety of the said Province is greatly endangered.”³² The following year, Maryland imposed a tariffs on imported enslaved people and also on “Irish Servants, to prevent the importing too great a Number of Irish Papists into this Province.”³³ A similar New Jersey tariff of fifteen pounds on each imported enslaved person sought to reduce reliance on enslaved labor and promote free labor and industry:

²⁸ *Id.* at 139–140.

²⁹ *Id.*

³⁰ Some of these were general taxes applied to imported goods, though most imposed a fixed duty for each imported enslaved person. *Id.* at 140–152.

³¹ Note that Pennsylvania abolitionism flourished in the middle and late-eighteenth century. Prior to this, the colony regulated slavery expressly to reduce the likelihood of slave revolt. Consider the preamble to Pennsylvania’s 1712 tariff on enslaved people: “Whereas Divers Plots and Insurrections have frequently happened, not only in the Islands, but on the Main Land of *America*, by Negroes, which have been carried on so far that several of the Inhabitants have been thereby barbarously Murthered, an instance whereof we have lately had in our neighboring Colony of *New York*. And whereas the Importation of Indian Slaves hath given our Neighboring *Indians* in this Province some umbrage of Suspicion and Dis-satisfaction.” A flurry of similar nonimportation resolutions followed New York’s 1712 slave revolt. See *Id.* at 142. Appendix A.

³² The full resolution held: “And *whereas*, the number of negroes do extremely increase in this Province, and through the afflicting providence of God, the white persons do not proportionably multiply, by reason whereof, the safety of the said Province is greatly endangered; for the prevention of which for the future, “*Be it further enacted* by the authority aforesaid, That all negro slaves from twelve years old and upwards, imported into this part of this Province from any part of Africa, shall pay such additional duties as is hereafter named, that is to say:—that every merchant or other person whatsoever, who shall, six months after the ratification of this Act, import any negro slaves as aforesaid, shall, for every such slave, pay unto the public receiver for the time being, (within thirty days after such importation,) the sum of two pounds current money of this Province.” *Id.* at 144.

³³ *Id.* at 145.

Whereas Duties on the Importation of Negroes in several of the neighbouring Colonies hath, on Experience, been found beneficial in the Introduction of sober, industrious Foreigners, to settle under His Majesty's Allegiance, and the promoting a Spirit of Industry among the Inhabitants in general: *In order therefore* to promote the same good Designs in this Government, and that such as choose to purchase Slaves may contribute some equitable Proportion of the publick Burdens."³⁴

Colonial legislators used importation tariffs to constrain immigration and build a white, protestant, free-labor population. By 1763, only New Hampshire, Delaware, and North Carolina had failed to tax the slave trade.³⁵

For the first half of the eighteenth century, Parliament did not direct tariff policy. Edmund Burke deemed this a regime of "a wise and salutary neglect."³⁶ Save for passage of occasional parliamentary tariffs, tax authority remained with the colonial legislatures. This changed with the end of the costly Seven Years' War. The War pushed Parliament to recoup losses by taxing colonial trade under the 1764 Sugar Act and 1765 Stamp Act. Thomas Whately, a member of Parliament and the British Board of Trade, claimed Parliament represented American colonists and thus held the authority to tax American trade.³⁷ But colonists lacked a dedicated seat in Parliament. This led Daniel Dulany of Maryland to decry Whately's argument as "a cob-web spread to catch the unwary, and intangle the weak."³⁸ Virginia's Patrick Henry held taxes on colonists were legitimate only if "derived from their own consent."³⁹ Without representation and consent, the Acts were illegitimate. Since Virginians were only represented in their colonial

³⁴ *Id.* at 153.

³⁵ In 1760, South Carolina attempted to wholly ban slave importation, only for Great Britain to override the act. Great Britain had also vetoed tariffs on slave importation passed by Pennsylvania in 1712 and 1715. *Id.* at 138–152.

³⁶ Edmund Burke, *Speech on Conciliation with America*, I in THE WORKS OF THE RIGHT HONORABLE EDMUND BURKE 181, 186 (1834).

³⁷ EDWARD COUNTRYMAN, THE AMERICAN REVOLUTION 41–52 (1985); ROGERS M. SMITH, CIVIC IDEALS: CONFLICTING VISIONS OF CITIZENSHIP IN U.S. HISTORY 70–86 (1997).

³⁸ Daniel Dulany, *Considerations on the Propriety of Imposing Taxes in the British Colonies, For the Purpose of Raising a Revenue, by Act of Parliament*, in TRACTS OF THE AMERICAN REVOLUTION, 1763-1776 (Merrill Jensen ed., 1967); John Dickinson, *Letters from a Farmer in Pennsylvania to the Inhabitants of the British Colonies*, in TRACTS OF THE AMERICAN REVOLUTION, 1763-1776 (Merrill Jensen ed., 1967); Merrill Jensen, *Introduction: The Pamphlet Writers and Their Times*, in TRACTS OF THE AMERICAN REVOLUTION, 1763-1776 xiii, xl–xli, xxix–xxxii (1967); COUNTRYMAN, *supra* note 37 at 65–9.

³⁹ Here "internal" modified "polity," not "taxation," such that Virginia's sovereignty extended to both domestic and international taxes. Patrick Henry, *Virginia Stamp Act Resolutions*, in JOURNALS OF THE HOUSE OF BURGESSES OF VIRGINIA, 1770-1772 (John Pendleton Kennedy ed., 1906), <http://catalog.hathitrust.org/Record/009790195>.

legislature, Henry declared the Virginia legislature had sole authority to levy tariffs and thus was sovereign in all matters of “internal Polity and Taxation.”⁴⁰ This statement bordered on insurrection.

Henry’s Stamp Act resolutions proved influential. Thomas Jefferson, then a young law student, listened at the door to Virginia’s House of Burgesses as Henry’s delivered his fiery defense of legislative and tariff sovereignty, rapt at “the splendid display of mr [sic] Henry’s talents as a popular orator.”⁴¹ Similar resolutions of tax sovereignty passed in Massachusetts, Rhode Island, Connecticut, New York, Pennsylvania, Maryland, and South Carolina. While colonists called a Stamp Act Congress in October 1765, during the Stamp Act crisis, the colonial legislatures were the primary sites for asserting tariff authority.⁴²

Southerners hoped to decrease their dependence on British slave merchants and lenders. This was a particularly acute concern in Virginia, where local planters bought enslaved people from British merchants on credit. When tobacco crops failed, Virginians’ debts to British firms grew. Governor Alexander Spotswood saw as much, worrying that Virginia slaveholders would struggle “to discharge the Debts already contracted for the purchase of those Negroes, if fresh supplys [sic] be still poured in upon them while their tobacco continues so little valuable.”⁴³ The Virginian Arthur Lee, writing in 1764, felt that this system kept Virginia planters, and the American colonies, in a state of mercantile dependence on Britian. The colonies produced and sold raw goods like cotton at discount rates while incurring mounting debts, rendering the Southern colonies “unfavorable to trade and manufactures, which have ever flourished in free states.”⁴⁴ Similarly, the trustees of the Georgia colony banned the international trade, which they worried would encourage “Idleness among the Poor Planters, and too great an Inequality among the People.” Continued importation would let the large planters “absent themselves and live in other Places, leaving the Care of their Plantations and Negroes to Overseers,” while the small

⁴⁰ *Id.*

⁴¹ Thomas Jefferson, *Autobiography*, in THOMAS JEFFERSON: WRITINGS , 5–6 (Merrill D. Peterson ed., 1984).

⁴² COUNTRYMAN, *supra* note 37 at 50–2, 63–4; JACK P. GREENE, THE CONSTITUTIONAL ORIGINS OF THE AMERICAN REVOLUTION 67–88 (2011). For prior, if troubled, attempts to enforce Parliamentary tariffs under the Navigation Acts, see Maier, *supra* note 26 at 428–48; NASH, *supra* note 14 at 2–8.

⁴³ Alexander Spotswood, *Letter to the Council of Trade, March 6, 1711, I* in THE OFFICIAL LETTERS OF ALEXANDER SPOTSWOOD, LIEUTENANT-GOVERNOR OF THE COLONY OF VIRGINIA, 1710-1722 , 52 (R. A. Brock ed., 1882). See also Woodward-Burns, *supra* note 18 at 65–66.

⁴⁴ ARTHUR LEE, AN ESSAY IN VINDICATION OF THE CONTINENTAL COLONIES OF AMERICA, FROM A CENSURE OF MR. ADAM SMITH IN HIS THEORY OF MORAL SENTIMENTS: WITH SOME REFLECTIONS ON SLAVERY IN GENERAL 39 (1764). See also Woodward-Burns, *supra* note 18 at 65–66.

planter would “Mortgage his Land to the Negro Merchant... In Consequence of which all the small properties would be swallowed up, as they have been in other places, by the more wealthy planters.”⁴⁵ Overconcentration of wealth in the hands of a few planters would encourage aristocracy and impede democracy. The Georgian trustees, like Spotswood and Lee in Virginia, therefore sought to limit the slave trade and attendant importation debts and cotton production, and instead encourage free labor, manufacturing, and economic independence from the Crown.

Colonists began using tariffs to assert trade sovereignty. Virginia lawmakers issued declarations condemning the trade on protectionist grounds. In 1767 and 1769, the Virginia legislature taxed slave imports, only to be vetoed by Britain’s Privy Council, which instructed royal governors to block future tariffs.⁴⁶ In response, in 1772 the legislature petitioned the Crown to lift this injunction. Lawmakers asked the Crown to prohibit the slave trade, a “trade of great inhumanity” that would “*endanger the very existence of your Majesty’s American dominions*” by encouraging slave overpopulation and revolt. Further, the trade placed Virginia planters in debt so that a few slave-trading “subjects of *Great Britain* may reap emoluments” while Virginia planters fell into debt.⁴⁷ Two years later, Virginia’s Albemarle and Nansemond Counties resolved “that the African trade is injurious to this Colony, obstructs the population of it by freemen, prevents manufacturers and other useful emigrants from Europe from settling amongst us, and occasions an annual increase of the balance of trade against this Colony.”⁴⁸ Virginia was not alone in this. Between 1765 and 1776, colonial lawmakers passed eighteen measures taxing the Atlantic slave trade.⁴⁹

⁴⁵ Benjamin Martyn, *An Account, Shewing the Progress of the Colony of Georgia*, in TRACTS AND OTHER PAPERS RELATING PRINCIPALLY TO THE ORIGIN, SETTLEMENT, AND PROGRESS OF THE COLONIES IN NORTH AMERICA: FROM THE DISCOVERY OF THE COUNTRY TO THE YEAR 1776, 9 (Peter Force ed., 1836); DUBOIS, *supra* note 15 at 138–159.

⁴⁶ Woodward-Burns, *supra* note 18 at 68.

⁴⁷ The full petition held: “[T]he importation of slaves into the colonies from the coast of Africa hath long been considered as a trade of great inhumanity, and under its present encouragement, we have too much reason to fear *will endanger the very existence* of your majesty’s American dominions. We are sensible that some of your Majesty’s subjects of *Great Britain* may reap emoluments from this sort of traffic, but when we consider that it greatly retards the settlement of the colonies with *more useful inhabitants*, and may, in time, have the most destructive influence, we presume to hope that the *interest of a few* will be disregarded when placed in competition with the security and happiness of such numbers of your Majesty’s dutiful and loyal subjects. Deeply impressed with these sentiments, we most humbly beseech your majesty to *remove all those restraints* on your majesty’s governors of this colony, *which inhibit their assenting to such laws as might check so very pernicious a commerce.*”

MISCELLANEOUS PAPERS, 1672-1865, NOW FIRST PRINTED FROM THE MANUSCRIPT IN THE COLLECTIONS OF THE VIRGINIA HISTORICAL SOCIETY (R.A. Brock ed., 1887). See also DUBOIS, *supra* note 15 at 153.

⁴⁸ Quoted in DUBOIS, *supra* note 15 at 31.

⁴⁹ See Appendix A.

Lawmakers also worried about slave revolt. Virginia’s royal Governor John Murray, Earl of Dunmore dissolved the legislature in May 1774, prompting a Virginia militia to march on the colony’s capital at Williamsburg the following year.⁵⁰ In response, Dunmore emptied the city’s magazine of gunpower and fled to the nearby warship *Fowey*.⁵¹ On November 7, 1775, Dunmore proclaimed his intent to “declare Freedom to the Slaves, and reduce the City of Williamsburg to Ashes.”⁵² Virginia planters, unable to arm themselves, saw Dunmore as a traitor who “designed, by disarming the people, to weaken the means of opposing an insurrection of the slaves.”⁵³ Noting Dunmore’s success, Massachusetts’ Governor Thomas Gage wrote British Secretary at War William Barrington with similar plans in 1775, having received two freedom petitions from slaves willing to take arms.⁵⁴ In North Carolina, Cape Fear slaves plotted to rebel with aid from Governor Josiah Martin, and in South Carolina, where enslaved people comprised sixty percent of the population, white colonists suspected the new Governor William Campbell would arm enslaved people – Campbell later attempted to save Thomas Jeremiah, a free Black man, from hanging for allegedly planning a revolt.⁵⁵ In December 1774, Savannah’s Gazette circulated stories of a failed nearby slave revolt in St. Andrew Parish, and two years later, news of another plot reached the colony’s committee of safety.⁵⁶ Rumors of slave revolt were widespread, fanned by separatists after Dunmore’s proclamation, though slave revolt coordinated by the British was admittedly less common.

This spurred another set of resolutions condemning British administration of the slave trade. Virginia’s House of Burgesses condemned Dunmore, who had plotted to “offer Freedom to our Slaves, and turn them against their Masters,”⁵⁷ and in the process, had taken “up the foundations of civil authority and government.”⁵⁸ Colonists began using the language of separation.

II. The Declaration, the State Constitutions, and Slave Importation, 1776-1780

⁵⁰ Woodward-Burns, *supra* note 18 at 69.

⁵¹ *Id.* at 68.

⁵² JOURNALS OF THE HOUSE OF BURGESSES OF VIRGINIA, 1773-1776 231 (John Pendleton Kennedy ed., 1905).

⁵³ EDMUND RANDOLPH, HISTORY OF VIRGINIA 219 (Arthur Shaffer ed., 1970).

⁵⁴ Robert G. Parkinson, *The Declaration of Independence, in A COMPANION TO THOMAS JEFFERSON* 44, 55 (2012); PARKINSON, *supra* note 17 at 55, 141–163, 168–173.

⁵⁵ Parkinson, *supra* note 54 at 55; PARKINSON, *supra* note 17 at 55, 141–163, 168–173.

⁵⁶ Parkinson, *supra* note 54 at 55; PARKINSON, *supra* note 17 at 55, 141–163, 168–173.

⁵⁷ JOURNALS OF THE HOUSE OF BURGESSES OF VIRGINIA, 1773-1776, *supra* note 52 at 231, 256–257.

⁵⁸ III, JOURNALS OF THE CONTINENTAL CONGRESS: 1774-1789 404 (Worthington Chauncey Ford ed., 1905).

Virginia lawmakers bristled against royal government. When Governor Dunmore dissolved the House of Burgesses in 1774, legislators reconvened nearby in Williamsburg's Raleigh Tavern, where they formed an emergency government and selected delegates to the Continental Congress.⁵⁹ Thomas Jefferson, then a congressional delegate in Philadelphia, penned instructions to the temporary government, opening with a statement of British intrusions on colonists' rights, which he titled *A Summary View of the Rights of British America*.⁶⁰ Among the complaints against the royal government was the perpetuation of slavery. The full clause held:

The abolition of domestic slavery is the great object of desire in those colonies, where it was unhappily introduced in their infant state. But previous to the enfranchisement of the slaves we have, it is necessary to exclude all further importations from Africa; yet our repeated attempts to effect this by prohibitions, and by imposing duties which might amount to a prohibition, have been hitherto defeated by his majesty's negative: Thus preferring the immediate advantages of a few African corsairs to the lasting interests of the American states, and to the rights of human nature deeply wounded by this infamous practice.⁶¹

Jefferson had, in a meeting of the freeholders of Albemarle County, Virginia, similarly called for "an immediate stop to all imports from Great Britain," and had penned the legislature's 1769 resolution against slave importation.⁶² Similarly, the legislature's 1772 petition to the Crown condemned the "importation of slaves into the colonies from the coast of Africa," which the petition dubbed "*so very pernicious a commerce*."⁶³

Other colonies began declaring separation from the Crown, adopting similar language. For example, North Carolina's April 1776 Halifax Resolves claimed that "Governors in different Colonies have declared Protection to Slaves who should imbrue their Hands in the Blood of their Masters."⁶⁴ Four colonies declared separation by calling conventions to draft state constitutions. There colonies were New Hampshire, in December 1775 and January 1776, South Carolina, in

⁵⁹ Note that this occurred in July 1774, some months before the gunpowder confrontation and Dunmore's proclamation of 1775. Woodward-Burns, *supra* note 18 at 69.

⁶⁰ *Id.* at 69–70.

⁶¹ Note in his personal printed copy, Jefferson struck "African" for "British," foisting the trade on the Crown. THOMAS JEFFERSON, *A SUMMARY VIEW OF THE RIGHTS OF BRITISH AMERICA* 24 (Paul Leicester Ford ed., 1892).

⁶² Thomas Jefferson, *Resolutions of the Freeholders of Albemarle County, I* in *THE PAPERS OF THOMAS JEFFERSON: 1760-1776*, 117–119 (Julian P. Boyd ed., 1950). See also Woodward-Burns, *supra* note 18 at 68.

⁶³ *PROCEEDINGS OF THE VIRGINIA HISTORICAL SOCIETY AT THE ANNUAL MEETING HELD DECEMBER 21-22, 1891*, *supra* note 47.

⁶⁴ Quoted in SAMUEL A' COURT ASHE, *HISTORY OF NORTH CAROLINA: FROM 1584 TO 1783* 518 (1908).

March 1776, New Jersey, in June 1776, and Virginia, the same month. The New Hampshire and South Carolina documents were expressly provisional frames of government, to be dissolved in case of reconciliation with Great Britain.⁶⁵ All four documents began with preambles declaring the causes of separation. The New Hampshire and New Jersey documents made no explicit mention of slavery, but the South Carolina Constitution of 1776 faulted royal governors for having “excited domestic insurrections; proclaimed freedom to servants and slaves, enticed or stolen them from, and armed them against their masters.”⁶⁶

On May 10 and 15, 1776, John Adams pushed the Second Continental Congress to pass a pair of resolutions calling the colonies to draft new state constitutions.⁶⁷ Jefferson, then a delegate to the Congress meeting in Philadelphia, wrote a provisional constitution for Virginia. His draft preamble included a clause blaming the Crown for the Atlantic slave trade, borrowing the sentiments of his 1769 Virginia nonimportation bill and adopting nearly verbatim the nonimportation language of his 1774 *Summary View*.⁶⁸ He wrote three versions of his Virginia constitution, sending the resulting draft to Edmund Pendleton, president of the Virginia state constitutional convention, which adopted some of Jefferson’s work.⁶⁹ Most importantly, the ratified Virginia Constitution of 1776 faulted George III for “prompting our negroes to rise in arms among us; those very negroes whom *he hath from time to time* by an inhuman use of his negative he hath refused permission to exclude by law.”⁷⁰

On June 7, 1776, Richard Henry Lee of Virginia asked the Continental Congress to draft a matching national declaration. In a unanimous vote, the Congress deputized Thomas Jefferson, John Adams, Benjamin Franklin, Roger Sherman, and Robert R. Livingston to write the document. This “Committee of Five” appointed Jefferson to write the first draft, charging Adams and Franklin with editing. Jefferson, acting as a “passive auditor of the opinions of others,” drew on the debates in the Virginia legislature, and those “hacknied in Congress for two years before.”⁷¹ For the Declaration’s clause on the slave trade, Jefferson drew from his first draft of

⁶⁵ ROBINSON WOODWARD-BURNS, *HIDDEN LAWS: HOW STATE CONSTITUTIONS STABILIZE AMERICAN POLITICS* 30 (2021).

⁶⁶ See the preamble to the South Carolina Constitution of 1776.

⁶⁷ WOODWARD-BURNS, *supra* note 65 at 30–31.

⁶⁸ *Id.* at 71.

⁶⁹ The second draft removed much of the abolitionist language, which he added again in the third draft, hinting at his commitment to the clause. *Id.* at 71

⁷⁰ See the preamble to the Virginia Constitution of 1776.

⁷¹ Thomas Jefferson, *Letter to James Madison, August 30, 1823*, III in *THE PAPERS OF JAMES MADISON*, 114–116 (David B. Mattern et al. eds., 2016).

the Virginia state constitution, expanding this section to serve as the Declaration's rhetorical crescendo.⁷² Years later, in a letter to Henry Lee, Jefferson noted the similarities to the Virginia Constitution of 1776, and stated that in writing the Declaration, he sought not "originality of principle or sentiment, nor yet copied from any particular and previous writing." Rather, the Declaration "was intended to be an expression of the American mind."⁷³

Adams and Franklin offered cursory edits. Both authors were steeped in the era's antislavery thinking.⁷⁴ Franklin supported keeping the clause intact, and Adams suggested redacting only the phrase "determined to keep open a market where MEN should be bought & sold."⁷⁵ With minimal edits, the Committee of Five sent the draft Declaration to the Congress. On July 3, 1776, delegates from Georgia, South Carolina, and unspecified Northern slave-trading colonies, "whose reflections were not yet matured to the full abhorrence of the traffic," as Jefferson put it, forced the deletion of the clause.⁷⁶ Adams clarified that the clause's "high tone, and the flights of Oratory" alienated the Georgia and South Carolina delegates, but the nonimportation argument the Georgia and South Carolina delegates perhaps supported, as their legislatures had passed similar nonimportation resolutions, and in the case of South Carolina, had similarly chafed under the royal veto.⁷⁷

Jefferson's clause had some immediate impact. At least two Virginians read Jefferson's original clause as a condemnation of Dunmore's plan to liberate slaves. On receiving Jefferson's draft Declaration, Richard Henry Lee on July 21, 1776 complained of "the disgrace of our African Hero [Dunmore]... now disturbing us in Potomac," adding his regret that Congress cut Jefferson's condemnation of Dunmore, wishing "the Manuscript had not been mangled as it is."⁷⁸ Similarly, in a July 29, 1776 letter, Jefferson sent the draft Declaration to the Virginia

⁷² PARKINSON, *supra* note 17 at 253n96; Woodward-Burns, *supra* note 18 at 71–72.

⁷³ Thomas Jefferson, *Letter to Henry Lee, May 8, 1825*, XI in THE WORKS OF THOMAS JEFFERSON (Paul Leicester Ford ed., 1905).

⁷⁴ Adams' Boston and Franklin's Philadelphia were abolitionist hotbeds. On the influence of abolitionism, especially in Philadelphia, see William M. Wiecek, *Somerset: Lord Mansfield and the Legitimacy of Slavery in the Anglo-American World*, 42 THE UNIVERSITY OF CHICAGO LAW REVIEW 86, 114–5 (1974); NASH, *supra* note 14 at 63.

⁷⁵ Adams, *supra* note 2 at 514.

⁷⁶ V, JOURNALS OF THE CONTINENTAL CONGRESS, 1774-1789 431, 491–516 (Worthington Chauncey Ford ed., 1906); Jefferson, *supra* note 1 at 299–329; Thomas Jefferson, *Letter to Robert Walsh, December 4, 1818*, X in THE WRITINGS OF THOMAS JEFFERSON (Paul Leicester Ford ed., 1899); Jefferson, *supra* note 71; Thomas Jefferson, *Letter to John Vaughan, September 16, 1825*, X in THE WRITINGS OF THOMAS JEFFERSON 345 (Paul Leicester Ford ed., 1899); BOYD, *supra* note 13 at 37.

⁷⁷ Adams, *supra* note 2 at 514; Woodward-Burns, *supra* note 18 at 75–76.

⁷⁸ Richard Henry Lee, *Letter to Thomas Jefferson, July 21, 1776*, I in THE PAPERS OF THOMAS JEFFERSON: 1760-1776 471, 471 (Julian P. Boyd ed., 1950).

planter Edmund Pendleton. Pendleton, who also complained to Jefferson of Dunmore's slave revolt, reviewed the draft Declaration, and replied with regret that Congress had "altered it much for the worse" in cutting Jefferson's original language.⁷⁹

The Declaration, and Adams May 10 and 15, 1776 resolutions pushed the remaining states to draft new, independent constitutions. Between July 1776 and October 1780, the colonies saw a flurry of conventions. Delaware's was the first document ratified after the Declaration, adopted in September 1776. The constitution held "No person hereafter imported into this State from Africa ought to be held in slavery under any presence whatever; and no negro, Indian, or mulatto slave ought to be brought into this State, for sale, from any part of the world."⁸⁰ Pennsylvania's Constitution of 1776, ratified some days later, did not mention the international slave trade, though the legislature in 1778, 1780, and 1785 proposed statutes for gradual emancipation and abolition of the trade.⁸¹ The Maryland Constitution of 1776, with a brief preamble, made no direct mention of slave insurrection or the slave trade, though the legislature imposed a tariff on slave importation the following year.⁸² Similarly, the North Carolina Constitution of 1776 did not directly regulate the trade. In 1777, Georgia and New York each ratified state constitutions, neither of which mentioned slavery. That same year, Vermont ratified a constitution banning slavery and the Atlantic slave trade, which the legislature banned for good measure in 1779.⁸³ Rhode Island, still operating under a colonial charter, abolished the trade by statute in 1779.⁸⁴ South Carolina wrote a permanent constitution in 1778, which opened by the causes of separation listed in the 1776 state constitution and the Declaration of Independence.⁸⁵ Finally, after several attempts, Massachusetts ratified a state constitution in 1780 which made no mention of the slave trade, but asserted the equality of men, which state courts soon used to abolish slavery in the state.⁸⁶

⁷⁹ Edmund Pendleton, *Letter to Thomas Jefferson, August 10, 1776*, I in THE PAPERS OF THOMAS JEFFERSON: 1760-1776 488 (Julian P. Boyd ed., 1950).

⁸⁰ See the Delaware Constitution of 1776, Article 26.

⁸¹ Though note the preamble faulted George III for "a most cruel and unjust war against them, employing therein, not only the troops of Great Britain, but foreign mercenaries, savages and slaves." See the preamble to the Pennsylvania Constitution of 1776 and DUBOIS, *supra* note 15 at 155; WOODWARD-BURNS, *supra* note 65 at 235n38.

⁸² DUBOIS, *supra* note 15 at 155.

⁸³ The preamble borrowed exactly Pennsylvania's aforementioned language faulting George III for inciting slave revolt. See the Vermont Constitution of 1777, preamble and Chapter I, Section 1 and *Id.* at 156.

⁸⁴ Note that Connecticut and Rhode Island maintained their royal charters.

⁸⁵ See the preamble to the South Carolina Constitution of 1778.

⁸⁶ *Commonwealth v. Jennison*, Rec. 1783, fol. 85.

III. State Nonimportation and the Constitution, 1780-1787

State lawmakers, unbound from the Crown and Parliament, regulated the slave trade without interference. Chairing a statute reform committee in the Virginia legislature, Jefferson proposed bills in 1777 and 1778 to ban slave importation and to expel slaves and mixed-race Virginians from the state.⁸⁷ A 1782 act allowed private manumission, and a 1785 bill banned primogeniture, a goal of Jefferson's 1776 constitution, helping establish the white, yeoman republic Jefferson had long sought.⁸⁸ Maryland banned slave importation in 1783, and that same year, and again in 1784, South Carolina passed flat duties on slave importation, imposing a total ban in 1787.⁸⁹ Rhode Island passed a manumission statute in 1784, and in 1785, New York made slave importation a crime punishable by a one hundred pound fine.⁹⁰ New Jersey passed a similar statute the following year, with a preamble boldly declaring the inhumanity of the slave trade.⁹¹ In 1786, Vermont replaced its state constitution, passing a ban on slave importation, enforceable with a one hundred pound fine.⁹² North Carolina in 1786 imposed a steep ban on importation, including over land from neighboring Virginia.⁹³ Finally, in 1787, Delaware introduced an act to prevent slave importation.⁹⁴ By that point, every state, save for New Hampshire, had banned or taxed the trade.

Some months after Delaware passed a nonimportation bill, delegates met in Philadelphia to draft a federal constitution. Delegates debated a national ban on the Atlantic trade. Charles Cotesworth Pinckney of South Carolina noted that Virginians supported such a ban because they had already established a large enslaved population within their state. He explained that

⁸⁷ Woodward-Burns, *supra* note 18 at 76.

⁸⁸ *Id.* at 77–78.

⁸⁹ DUBOIS, *supra* note 15 at 157, 159.

⁹⁰ Rhode Island passed a second importation ban in 1787. *Id.*

⁹¹ The preamble held: “Whereas the Principles of Justice and Humanity require that the barbarous Custom of bringing the unoffending African from his native Country and Connections into a State of Slavery ought to be discountenanced, and as soon as possible prevented; and sound Policy also requires, in order to afford ample Support to such of the Community as depend upon their Labour for their daily Subsistence, that the Importation of Slaves into this State from any other State or Country whatsoever, ought to be prohibited under certain Restrictions; and that such as are under Servitude in the State ought to be protected by Law from those Exercises of Wanton Cruelty too often practiced upon them; and that every unnecessary Obstruction in the Way of freeing Slaves should be removed.” *Id.* at 158.

⁹² The Vermont Constitution of 1777, modeled after the radical Pennsylvania Constitution of 1776, fell out of favor, encouraging replacement. Similarly, New Hampshire drafted a permanent constitution in 1784, replacing the temporary Constitution of 1776. Robert F. Williams, *The State Constitutions of the Founding Decade: Pennsylvania's Radical 1776 Constitution and Its Influences on American Constitutionalism*, 62 TEMP. L. REV. 541 (1989); DUBOIS, *supra* note 15 at 159.

⁹³ DUBOIS, *supra* note 15 at 159.

⁹⁴ DUBOIS, *supra* note 15 at 159.

“Virginia... will gain by stopping the importations. Her slaves will rise in value, & she has more than she wants.”⁹⁵ Oliver Ellsworth agreed that “slaves also multiply so fast in Virginia & Maryland that it is cheaper to raise than import them.” In contrast, in the far South, “in the sickly rice swamps foreign supplies are necessary,” such that a national ban “shall be unjust to S. Carolina & Georgia.”⁹⁶ In response, George Mason of Virginia warned that maintaining the trade for South Carolina and Georgia would let slaves spread west: “The western people are already calling out for slaves for their new lands, and will fill the country with slaves if they can be got through South Carolina and Georgia.”⁹⁷ Reviving Virginia’s antislavery and nonimportation language, Mason reminded Convention delegates: “This infernal traffic originated in the avarice of British Merchants. The British Govt. constantly checked the attempts of Virginia to put a stop to it...The evil of having slaves was experienced during the late war. Had slaves been treated as they might have been by the Enemy, they would have proved dangerous instruments in their hands.”⁹⁸ Underlying Mason’s antislavery language, and that of the state constitutions and the Declaration of Independence, was a market logic, and a wariness of slave revolt.

On the eve of the centennial of the signing of the Declaration, *The Atlantic* magazine offered a nuanced reading of the deleted clause, arguing that Jefferson’s condemnation of the clause did not represent broader antislavery sentiment, but rather a narrow grievance over trade:

The foolish king had committed errors enough, but it was not fair to hold so limited a person responsible for not being a century in advance of his age; nor was it ever in the power of any king to compel his subjects to be slaveowners. It was Young Virginia that spoke in this paragraph, — Wythe, Jefferson, Madison, and their young friends, — not the public mind of America, which was destined to reach it, ninety years after, by the usual way of agony and blood.⁹⁹

⁹⁵ II, THE RECORDS OF THE FEDERAL CONVENTION OF 1787 370–1 (Max Farrand ed., 1911).

⁹⁶ *Id.*

⁹⁷ *Id.* Mason’s fears were perhaps unfounded, as South Carolina moved to prohibit slave importation in October 1787 and Georgia did so in December 1793. DUBOIS, *supra* note 15 at 160–64.

⁹⁸ II RECORDS, *supra* note 94 at 370–1; Thomas Jefferson, *The Ordinance of 1784, 23 April 1784*, VI in THE PAPERS OF THOMAS JEFFERSON: 1781–1784 613 (Julian P. Boyd ed., 1950); Michael L. Nicholls, ‘*The Squint of Freedom*’: *African-American Freedom Suits in Post-revolutionary Virginia*, 20 SLAVERY & ABOLITION 47, 51, 54–5 (1999); TAYLOR, *supra* note 16 at 6; William G. Merkel, *Jefferson’s Failed Anti-Slavery Proviso of 1784 and the Nascence of Free Soil Constitutionalism*, 38 SETON HALL L. REV. 555 (2008).

⁹⁹ Parton, *supra* note 3.

The Civil War, not the Declaration, made good on Jefferson's bold rhetoric. At the semiquincentennial, we would do well to remember the clause's ambiguous legacy. The second Trump Administration has been hawkish in excising any references to slavery in discussing the Declaration. In the White House's semiquincentennial *Story of America* series, Hillsdale College President's Larry Arnn makes no reference to slavery in summarizing the Declaration.¹⁰⁰ Similarly, the Administration recently removed references to slavey from the grounds of Independence Hall.¹⁰¹ If nothing else, it is worth remembering the Declaration, like the first state constitutions, at once protected and condemned the slave trade.

¹⁰⁰ *The Story of America*, www.whitehouse.gov/america250/ (last visited Feb. 17, 2026).

¹⁰¹ Jake Spring, *Park Service Removes Slavery Exhibit at Independence Park in Philadelphia*, THE WASHINGTON POST, Jan. 22, 2026, <https://www.washingtonpost.com/climate-environment/2026/01/22/slavery-exhibit-removed/>.

Appendix

Year	Jurisdiction	Title
1763	Maryland	An Act for imposing an additional Duty of Two Pounds per Poll on all Negroes Imported into this Province
1763	New Jersey	An Act for laying a duty on Negroes and Mulatto Slaves Imported into this Province
1764	South Carolina	An Act for laying an additional duty upon all Negroes hereafter to be imported into this Province
1766	Virginia	An act for laying an additional duty upon slaves imported into this colony
1766	Rhode Island	
1768	Pennsylvania	
1769	New Jersey	An Act for laying a Duty on the Purchasers of Slaves imported into this Colony
1769	Connecticut	
1770	Rhode Island	
1771	Massachusetts	
1771	Maryland	An Act for imposing a further additional duty of five pounds current money per poll on all negroes imported into this province
1772	Virginia	
1773	Pennsylvania	An Act for making perpetual the act ...[of 1761]... and laying an additional duty on the said slaves.
1774	Massachusetts	
1774	Rhode Island	An Act prohibiting the importation of Negroes into this Colony.
1774	Connecticut	An Act for prohibiting the Importation of Indian, Negro or Molatto Slaves
1774	New Jersey	A Bill for laying a Duty on Indian, Negroe and Molatto Slaves, imported into this Colony
1775	Delaware	
1775	Virginia	
1776	Virginia	
1776	Delaware	
1777	Vermont	
1777	Maryland	An act concerning duties
1778	Pennsylvania	An Act for the recovery of the duties on Negroes and Mulattoe slaves,
1778	Virginia	An Act for preventing the farther importation of Slaves
1779	Rhode Island	An Act prohibiting slaves being sold out of the state, against their consent
1779	Vermont	An Act for securing the general privileges of the people
1780	Massachusetts	
1780	Pennsylvania	An Act for the gradual abolition of slavery
1783	Maryland	An Act to prohibit the bringing slaves into this state
1783	South Carolina	An Act for levying and collecting certain duties and imposts therein mentioned, in aid of the public revenue

1784	Rhode Island	An Act authorizing the manumission of negroes, mulattoes, and others, and for the gradual abolition of slavery
1784	South Carolina	An Act for levying and collecting certain Duties
1785	New York	An Act granting a bounty on hemp to be raised within this State, and imposing an additional duty on sundry articles of merchandise, and for other purposes therein mentioned
1785	Rhode Island	
1786	New Jersey	An Act to prevent the importation of Slaves into the State of New Jersey, and to authorize the Manumission of them under certain restrictions, and to prevent the Abuse of Slaves
1786	Vermont	An act to prevent the sale and transportation of Negroes and Molattoes out of this State
1786	North Carolina	An act to impose a duty on all slaves brought into this state by land or water
1787	Delaware	An Act to prevent the exportation of slaves, and for other purposes
1787	South Carolina	An Act to regulate the recovery and payment of debts and for prohibiting the importation of negroes
1787	South Carolina	An Ordinance to impose a Penalty on any person who shall import into this State any Negroes, contrary to the Installment Act
1787	Rhode Island	An act to prevent the slave trade and to encourage the abolition of slavery

From W. E. B. DuBois, THE SUPPRESSION OF THE AFRICAN SLAVE-TRADE TO THE UNITED STATES OF AMERICA, 1638-1870 Appendix A (1896).