DEXTER FRANKLIN

A LETTER TO THE HON. SAMUEL A. ELIOT, REPRESENTATIVE IN CONGRESS FROM THE CITY OF BOSTON, IN REPLY TO HIS APOLOGY FOR VOTING FOR THE FUGITIVE SLAVE BILL

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A LETTER, &c

Sir; —

An English courtier procured a colonial judgeship for a young dependant wholly ignorant of law. The new functionary, on parting with his patron, received from him the following sage advice, – "Be careful never to assign reasons, for whether your judgments be right or wrong, your reasons will certainly be bad." You have cause to regret that some friend had not been equally provident of your reputation, and intimated that it was only expected of you to vote for Mr. Webster's measures, but

by no means to assist him in vindicating them. You did, indeed, vote precisely as those who procured your nomination intended you should; yet, on your return home, you found your name had become a byword and a reproach in your native State. Another election approached, but you declined submitting your recent course to the judgment of the electors, and withdrew from the canvass. But although the people were thus prevented from voting against you, they persisted in speaking and writing against you. Anxious to relieve yourself from the load of obloquy by which you were oppressed, in an evil hour you rashly appealed to the public through the columns of a newspaper, and gave the "reasons" of your vote for the Fugitive Slave Law. You had a high and recent example of the kind of logic suited to your case. You might have indulged in transcendental nonsense, and talked about the climate, soil, and scenery of New England and the wonders of physical geography, and, assuming that negroes were created free, you might have contended that, in voting for a law to catch and enslave them, you had avoided the folly of reënacting the law of God. Reasons of this sort, you and others had declared, "had convinced the understanding and touched the conscience of the nation." Instead of following an example so illustrious and successful, you assign "reasons" so very commonplace, that the most ordinary capacity can understand them, and so feeble, that the slightest strength can overthrow them.

Your first "reason" is, that the delivery of fugitives is a constitutional obligation. By this you mean, that, by virtue of

the construction of a certain clause in the Constitution by the Supreme Court, Congress has the power to pass a law for the recovery of fugitive slaves. Well, Sir, does this constitutional obligation authorize Congress to pass *any* law whatsoever on the subject, however atrocious and wicked? Had you voted for a law to prevent smuggling, in which you had authorized every tide-waiter to shoot any person suspected of having contraband goods in his possession, would it have been a good "reason" for such an atrocity, that the collection of duties was "a constitutional obligation"? You are condemned for voting for an arbitrary, detestable, diabolical law, – one that tramples upon the rights of conscience, outrages the feelings of humanity, discards the rules of evidence, levels all the barriers erected by the common law for the protection of personal liberty, and, in defiance of the Constitution, and against its express provisions, gives to the courts the appointment of legions of slave-catching judges. And your "reason" for all this is, that the delivery of fugitives is "a constitutional obligation"! The "obligation" is not in issue. Please to understand, Sir, that it is not denied. It is for the *manner* in which you profess to have discharged the obligation that you are censured, and be it remembered, that not one of the obnoxious provisions of your law is required by the Constitution. You go on and attempt to enlighten your constituents as to the history of this constitutional obligation. As the obligation affords you no apology for the iniquitous features of your law, its history is, of course, mere surplusage, and serves no other purpose than

to divert the attention of your readers from yourself. About two thirds of your apology is occupied with an historical disquisition, which has as much to do with your vindication as the question respecting the existence of a lunar atmosphere. I will not, however, withhold from you whatever benefit you may derive from either your logic or your history, but will give each a fair and honest examination. You inform the public that, at the time the Constitution was formed,

> "Slavery had been abolished in some of the States, and still existed in others. Here seemed an insurmountable incompatibility of interests, and nothing perplexed the wise men of that day – and they were *very* wise men – so much as this topic. At last they agreed that the new Constitution should have nothing to do with it; that the word *slavery* should not be mentioned in it, and that it should be left to the States themselves to establish, retain, or abolish it, just as much after the adoption of the Constitution as before. But in order to secure the existence of the institution to those States who preferred it, it was agreed that the persons escaping from labor to which they were bound, in one commonwealth, and found in another, should be returned to the State from which they had fled. The provision was necessary for the preservation of this interest *in statu quo*. It did not extend slavery. It kept it where it already was, and where it could not have continued if every slave who escaped North was at once free and irreclaimable. The members of the confederacy from the South saw this distinctly, and *deliberately declared* that they

> could not and would not enter a union with States who would tempt away their slaves with the prospect of immediate and permanent freedom… The Constitution was adopted with this provision, and it could not have been adopted without it."

Thus we learn from you, Sir, that when the Constitution was formed, "slavery had been abolished in some of the States." It is a pity you did not vouchsafe to tell us which of the States had thus early and honorably distinguished themselves. Of the thirteen American States in 1787, how many, Sir, had *by law* abolished slavery? Not one. Your "some States" consisted of Massachusetts alone. And how was slavery abolished there? Not by any express prohibition in her constitution, nor by any act of her legislature. Fortunately, her constitution, like that of most other States, contained a general declaration of human rights, somewhat similar to the "rhetorical abstraction" in the Declaration of Independence. Two or three years before the Federal Convention assembled, a young lawyer, perceiving that the declaration in the constitution had inadvertently made no exclusion of the rights of men with dark complexions, brought an action for a slave against his master for work done and performed. An upright and independent court, not having the fear of our Southern brethren before their eyes, decided that the slave was a MAN, and therefore entitled to the rights which the constitution declared belonged to *all* men, and gave judgment for the plaintiff. In this way, Sir, was slavery abolished

in Massachusetts, and hence the delegates from Massachusetts in the Convention were the only ones who represented a *free* State. And now, Sir, what becomes of your "insurmountable incompatibility of interests" arising from the fact that "slavery had been abolished in some States and still existed in others," which you tell us so much perplexed the wise men of that day? We shall see, Sir, that on questions touching human bondage the Massachusetts delegation seem to have been slaveholders in heart, and did not partake of the perplexity which troubled the wise men. With the exception of that delegation, there were not probably half a dozen members of the convention who were not slaveholders.

It would seem from your historical review, that the clause in the Constitution respecting fugitive slaves was the grand compromise between the North and the South, without which "the Constitution could not have been adopted"; and that to this clause we owe our glorious slave-catching Union. You fortify this wonderful historical discovery by appealing to the "deliberate declarations" of Southern members, that they "would not enter a union with States who would tempt away their slaves," &c. It is to be regretted that you have not deemed it expedient to refer to the records of these declarations, as other students of our constitutional history are wholly ignorant of them. Suffer me, Sir, to enter into a few historical details, for the purpose of vindicating the liberty I take to differ with you as to the accuracy of your statements.

The Convention met in Philadelphia, 25th May, 1787. On the 29th of the same month, Mr. Randolph, of Virginia, submitted a plan of government. It contained no allusion to fugitive slaves. On the same day, Mr. Charles Pinckney, of South Carolina, submitted another plan. This last provided for the surrender of fugitive criminals, but was silent about fugitive slaves. On the 15th of June, Mr. Patterson, of New Jersey, submitted a third plan. This also provided for the surrender of fugitives from justice, but not from bondage. On the 18th, Mr. Hamilton announced his plan, but the fugitive slave found no place in it. On the 26th of June, the Convention, having agreed on the general features of the proposed Constitution in the form of resolutions, referred them to "a committee of detail," for the purpose of reducing them to the form of a Constitution. In these resolutions, there was not the most distant allusion to fugitive slaves. On the 6th of August, the committee reported the draft of a Constitution, and yet, strange as you may deem it, the provision without which, you tell us, the Constitution could not have been adopted, was not in it, although there was in it a provision for the surrender of fugitive criminals. For three months had the Convention been in session, and not one syllable had been uttered about fugitive slaves. At last, on the 29th of August, as we learn from the minutes, "It was moved and seconded to agree to the following proposition, to be inserted after the 15th article: 'If any person, bound to service or labor in any of the United States, shall escape into another State, he or she shall not be discharged from

such service or labor in consequence of any regulation subsisting in the State to which they escape, but shall be delivered up to the person justly claiming their service or labor,' *which passed unanimously*." Really, Sir, I find in this record but little evidence of the perplexity which distressed our wise men, or of the great compromise between the North and South, on which you dwell. The 15th article, referred to above, was the article providing for the surrender of fugitives from justice, and this suggested the idea, that it would be well to provide, also, for the surrender of fugitive slaves. In an assembly consisting almost exclusively of slaveholders, the idea was exceedingly relished; and without a word of opposition, the suggestion was unanimously adopted. From Mr. Madison's report we learn that, the day before, Messrs. Butler and Pinckney had informally proposed that fugitive slaves and servants should be delivered up "like criminals." "Mr. Wilson [of Penn.]. This would oblige the Executive of the State to do it at the public expense. Mr. Sherman [of Conn.] saw no more propriety in the public seizing and surrendering a slave or servant than a horse." (*Madison Papers*, p. 1447.) The subject was here dropped. The next day the motion was made in form, and, as Mr. Madison says, "agreed to, *nem. con.*" From the phraseology of the motion, and the objections of Messrs. Wilson and Sherman, it was perfectly understood that the obligation of delivery was imposed on the States, and that no power was intended to be conferred on Congress to legislate on the subject. Messrs. Wilson and Sherman's objections arose from no moral

repugnance to slave-catching, but from the inconvenience they apprehended the *State* authorities would be subjected to; and Mr. Wilson perhaps spoke from experience, as his own State had at that very time a law for catching and returning fugitive slaves from other States. The idea, therefore, that this agreement was a *compromise* between the North and South is wholly imaginary, and you, Sir, must have mistaken some recent fulminations from the Southern chivalry for the "deliberate declarations" which you suppose were made in the Convention. Believe me, Sir, no members of the Convention ever declared they would not enter into the Union, unless it was agreed to surrender fugitive slaves, for the obvious reason, that the Northern slaveholders required no threats from their Southern brethren to consent to a compact convenient to both. It is very true, Sir, that there were compromises, and that there were "deliberate declarations," but they had no reference to the surrender of runaway slaves. I have pointed out your historical mistake, not because it has the remotest bearing on your justification, but because you seem to think that it has.

The first great compromise was between, not the North and the South, but the small and the large States. The one claimed, and the other refused, an equality of suffrage in the national legislature. It was at last agreed, that the suffrage should be equal in one house, and according to population in the other. This was the first compromise. Then came the question, What should constitute the representative population? The Southern States

had more slaves than the Northern, and the former insisted that slaves should be included in the representative population. This would have given the Southern States an unfair preponderance in Congress. Moreover, a portion of the Southern States were engaged in the African slave-trade, and, of course, every slave landed on their shores would increase their political power in Congress. To reconcile the North to slave representation, it was offered that *direct taxation* should be proportioned to representation. But the North was reluctant, and, as usual, was bullied into a compromise. Mr. Davie, of North Carolina, made a "deliberate declaration": – "He was sure that North Carolina would never confederate on any terms that did not rate them (the slaves) at least as three fifths. If the Eastern States meant, therefore, to exclude them (the slaves) altogether, the business was at an end." (*Madison Papers*, p. 1081.) This threat, and others like it, settled the matter. The compromise, of three fifths of the slaves to be included in the representative population, was accepted on the motion of *a New England member*; and the consequence is, that the slave States have now twenty-one members in the lower house of Congress more than they are entitled to by their free population. This was the second compromise. There was still a third, far more wicked and detestable, and effected by the "deliberate declarations" of Southern members. The "committee of detail" has been already mentioned. It consisted of Messrs. Rutledge of South Carolina, Randolph of Virginia, Wilson of Pennsylvania, Ellsworth of

Connecticut, and Gorham of Massachusetts. This committee, it will be recollected, were to reduce to the *form* of a Constitution the resolutions agreed on by the Convention. Neither in the resolutions themselves, nor in the discussions which preceded their adoption, had any reference been made to a guarantee for the continuance of the African slave-trade. Nevertheless, this committee, of their own will and pleasure, inserted in their draft the following clause: – "No tax or duty shall be laid by the legislature on articles exported from any State, *nor on the migration or importation of such persons as the several States shall think proper to admit, nor shall such migration or importation be prohibited*." To understand the cunning wickedness of this clause, it must be recollected that Congress was to have power to regulate foreign commerce, and commerce between the States; and hence it might, at a future time, suppress both the foreign and domestic commerce in human flesh, or it might burden this commerce with duties. Hence this artfully expressed perpetual restriction on the power of Congress to interfere with the traffic in human beings. As this grand scheme was concocted in the committee, and not in the Convention, it may be interesting to inquire into its paternity.

In the debates which ensued on this clause, Mr. Ellsworth, one of the committee who reported it, "was for leaving the clause as it now stands. *Let every State import what it pleases.* The morality or wisdom of slavery are considerations belonging to the States themselves. *What enriches a part enriches the whole*,

and the States are the best judges of their particular interests. The old Confederation had not *meddled* with this point, and he did not see any greater necessity for bringing it within the policy of the new one." "As slaves multiply so fast in Virginia and Maryland that it is *cheaper* to raise than to import them, whilst in the *sickly* rice-swamps foreign supplies are *necessary*, if we go no farther than is urged [a proposal to permit the trade for a limited time], we shall be unjust towards South Carolina and Georgia. Let us not intermeddle." (*Madison Papers*, pp. 1389, 1391.) This gentleman was one of your "very wise men"; and his mantle has recently fallen upon other wise men from the East. Mr. Wilson, another member of the committee, objected. "All articles imported," said he, "are to be taxed; slaves alone are exempt. This is, in fact, a bounty on that article." The clause was referred to another committee, who modified it, by limiting the restriction to 1800. It was moved to guarantee the slave-trade for twenty years, by postponing the restriction to 1808. This motion was *seconded* by Mr. Gorham, another member of the committee. Mr. Randolph, also of the committee, was against the slave-trade, and opposed to any restriction on the power of Congress to suppress it. Two of the committee, then, we find, were against the trade, and three, Messrs. Rutledge, Ellsworth, and Gorham, for perpetuating it. And now, Sir, what were the inducements which prevailed on the two wise men from the East to yield their consent to a proposition so wicked and abominable? We are, of course, not informed what passed in the

committee, but we can well imagine, from the language used by the chairman and others in the Convention. Said Mr. Rutledge, "If the Convention thinks North Carolina, South Carolina, and Georgia will ever agree to this plan [the Federal Constitution] unless their right to import slaves be untouched, the expectation is VAIN. The people of those States will never be such fools as to give up so important an interest." In other words, "Gentlemen of the North, no Union without the African slave-trade." Said Mr. Charles Pinckney, "South Carolina can never receive the plan [of the Constitution] if it prohibits the slave-trade. In every proposed extension of the powers of Congress, that State has expressly and watchfully excepted that of meddling with the importation of negroes." (*Madison Papers*, p. 1389.) Mr. Charles C. Pinckney "thought himself bound to declare candidly, that he did not think South Carolina would stop her importations of slaves in any short time." Thus you see, Sir, that the "deliberate declarations" to which you allude were made in reference to the continuance of the African slave-trade, and not, as you suppose, to the catching of fugitive slaves. Two New England gentlemen of the committee yielded to these declarations, and sacrificed conscience and humanity for the sake of the Union, and the consideration that what enriched a part enriched the whole. Happily, in this case, Southern bluster was met by Southern bluster, and it is owing to Virginia, and not to the virtue and independence of New England, that the Constitution was rescued from the infamy of granting a solemn and perpetual guarantee

to an accursed commerce.

In Virginia, the slaves, as Mr. Ellsworth remarked, multiplied so fast, that it was *cheaper* to raise than import them. She was then, as now, a breeding State for the Southern markets. Hence, her delegates were as ready to bluster for protection, as the South Carolina delegates were for a free trade in men and women. Of course, the *motives* assigned were patriotic, not selfish. Mr. Randolph "could never agree to the clause as it stands. He would sooner risk the Constitution." (*Madison Papers*, p. 1396.) Mr. Madison would not consent to the continuance of the traffic till 1808. "Twenty years will produce all the mischief that can be apprehended from the liberty to import slaves. So long a term will be more dishonorable to the American character, than to say nothing about it in the Constitution." (*Madison Papers*, p. 1427.) Mr. Mason from Virginia denounced the traffic as "infernal." (*Madison Papers*, p. 1390.) The result of all these threats on each side was, as usual, a compromise, by which Congress was prohibited from suppressing the foreign and internal commerce in slaves for twenty years, and was left at liberty to do as it might see fit, after that period. After twenty years the foreign trade was suppressed, and North and South Carolina and Georgia remained in the Union! Virginia, as well as the other Slave States, is greatly interested in the home slave-trade, and that has *not* been suppressed, although Congress has full power over it.

It does not appear from Mr. Madison's report what reply

was made in the Convention to the Virginia objections, but in his speech in the Convention of his own State, he tells us, – "The gentlemen from South Carolina and Georgia argued in this manner: We have now liberty to import this species of property, and much of the property now possessed had been purchased or otherwise acquired in contemplation of improving it by the assistance of imported slaves. What would be the consequence of hindering us in this point? The *slaves* of Virginia would rise in value, and we should be obliged to go to your markets." (*Elliott's Debates*, III. 454.) Certainly, Sir, these South Carolina and Georgia delegates were "very wise men," and their predictions are now history, and the planters of Georgia, South Carolina, Mississippi, and Louisiana buy slaves of the Virginia breeders. But what shall I say of the wise men from the East? This horrible compromise, this guarantee of the African slave-trade for twenty years, was carried by the votes of the Massachusetts and Connecticut delegates, and would have been defeated, had they had the courage and virtue to have voted against it.

I have indulged in this long digression, to show that the clause in the Constitution respecting fugitive slaves was not, as you represent it, the great compromise of the Constitution, the key-stone of the Union, and that our slaveholding fathers were not, as you suppose, greatly perplexed, nor their consciences deeply wounded, by the existence of slavery in all the States of the confederacy with one exception. Having disposed of your history, I return to your logic.

Whether the constitutional injunction to surrender fugitive slaves was a compromise or not, is of no practical importance. The clause speaks for itself, and prescribes no mode by which the title of the claimant shall be ascertained, while it expressly implies that the title shall be established before the surrender is made. Hence, the fair presumption is, that the title to a MAN shall be proved, with at least as much certainty and formality as the title to a horse. Had you, Sir, in your law, provided that a Virginian shall not come to Boston, and there seize and carry off a husband, wife, or child but by the same process, and on as strong evidence, as he may now seize and carry off a horse which you claim as your own, instead of finding your name a byword and a reproach, you would have been honored and applauded by your fellow-citizens, and returned to Congress by a triumphant vote; nor is there a syllable in the Constitution which prohibits or discountenances such a mode of deciding the title to a human being. It is in vain, then, Sir, that you plead your "constitutional obligation" in justification of your most detestable law. But, as if one wrong could justify another, you plead in your excuse the law of 1793, and you ask in your simplicity of those who condemn your law if they do not perceive that they are "denouncing their fathers." Well, Sir, were our fathers infallible? Pity it is, Sir, that you were not on the floor of Congress when that body declared the African slave-trade to be PIRACY. You might then, Sir, have risen in your place, and inquired, "Do you not perceive that you are denouncing your fathers, who were very wise men, and

who guaranteed for twenty years the very traffic which you now proclaim to be piracy?" Pity it is, Sir, that you did not stand by the side of your patron on Plymouth Rock, and whisper in his ear, "Do you not perceive that you are denouncing our fathers?" when he declared, "In the sight of our law the African slave-trader is a PIRATE and a FELON, and in the sight of Heaven an offender beyond the ordinary depth of human guilt." Mr. Webster is better versed in constitutional history than you are, and he well knew that some of our fathers "deliberately declared they would not enter a Union" in which they were to be debarred from pursuing this piratical, felonious, guilty traffic. Our fathers were mostly slaveholders, and yet you, Sir, unconsciously denounce both their morality and intelligence, when you affirm the institution of slavery to be "wrong and unwise." And yet all who presume to find fault with your cruel, unjust, wicked law are guilty forsooth of denouncing their fathers!

You tell us that the Convention of 1787 "*agreed that the new Constitution should have nothing to do with slavery*." I have not been so fortunate as to find the record of this agreement, but if such a compact was indeed made, then seldom, if ever, has a solemn covenant been more grossly and wickedly violated. Is it, Sir, in virtue of this agreement, that you voted to fine and imprison every conscientious, humane citizen who may refuse, at the command of a minion of a commissioner, to join in a slave hunt? Did this agreement confer on the holders of slaves an enlarged representation in Congress? Was it in

pursuance of this agreement that the importation of slaves was guaranteed for twenty years? Did this agreement authorize the Federal government to enter into negotiations with Great Britain and Mexico for a mutual surrender of runaway slaves? Was it in pursuance of this same agreement, that our government negotiated with Russia and Spain to prevent emancipation in Cuba, – a traitorous conspiracy with despots against the rights of man? How, Sir, was this agreement illustrated, when Daniel Webster, as Secretary of State under John Tyler of glorious memory, made a demand on Great Britain for the surrender of the slaves of the Creole, who had gallantly achieved their liberty, and taken refuge in the West Indies? How comes it, Sir, that under this agreement an act of Congress secures to the Slave States officers in the navy in proportion to the number of their slaves? How is it, that under this agreement colored men are seized in the District of Columbia, under "the exclusive jurisdiction" of the Federal government on the *suspicion*

Конец ознакомительного фрагмента.