

FROM ABOLITIONIST TO ANARCHIST: LYSANDER SPOONER'S RADICAL TRANSITION THROUGH THE CIVIL WAR

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IN "THE TALE OF THE SLAVE," Robert Nozick presents a thought experiment about a slave who is "completely at the mercy of his brutal master's whims."¹ Given this situation of total domination and arbitrary cruelty, the status of the slave as such is readily apparent. However, Nozick continues on to explain a second stage in the tale, in which the slave is only beaten for infractions of the rules. Then, he adjusts the premise further to describe a group of slaves with a master in charge of allocating their provisions. In the following stages of the tale, the slave master continues to provide minor improvements for his slaves. At first he only makes them work three days per week, instead of seven. Then, he lets them go find their own work, obligating them to pay "three-sevenths of their wages," in keeping with the previous proportion of obligation.² He also reserves the right to

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¹ Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 2013), 290.

² This stage of the tale inadvertently parallels the experiences of Frederick Douglass:

I could see no reason why I should, at the end of each week, pour the reward of my toil into the purse of my master. When I carried to him my weekly wages, he would, after counting the money, look me in the face with a robber-like fierceness, and ask, "Is this all?" He was satisfied with nothing less than the last

change the terms of payment, call them back into service, or restrict their activities if they might be detrimental to his profits. In the sixth stage, the master has 10,000 slaves and allows them—but not “you”—the right to vote. The slaves engage in open discourse as to how to collectively direct their master in his allocation of their (and your) earnings. In stage seven, you are given the right to attempt to persuade the others about how they should vote, and in stage eight, you are given the right to vote but only in the event of a tie (which, Nozick points out, has never occurred). In the final stage, you are given the right to vote regardless of a tie, though in practice, this changes nothing. Concluding his tale, Nozick asks, “Which transition from case 1 to case 9 made it no longer the tale of the slave?” He thus leads the reader to conclude that submission to even democratic governments is slavery.³ Lysander Spooner died nearly a century before the original 1974 publication of Nozick’s book, but it is not an exaggeration to say that Spooner witnessed a version of Nozick’s thought experiment unfold during his lifetime. Spooner was raised by abolitionist parents to detest slavery as it existed in the southern states prior to the Civil War; this was slavery as described in the first five stages of Nozick’s hypothetical example. Although it effectively ended slavery in the United States, in a way, the war also guided Spooner through the later stages of Nozick’s logic to conclude that the Union government served only to replace chattel slavery with, as he put it, “political slavery.” Spooner’s transition from abolitionist to anarchist can be easily traced through his writings regarding the Constitution and slavery, and wholly credited to his observations on the war.

Because Spooner never applied the term “anarchist” to himself, any analysis regarding anarchism as he conceived it is based on an understanding of the term as imputed to Spooner by others. It is therefore necessary to clarify the interpretation of anarchism applied in this paper and how it relates to abolitionism. In his book *Radical Abolitionism: Anarchy and the Government of God in Antislavery Thought* (1973), Lewis Perry explores this issue as it related to the abolitionists of the antebellum United States. He writes that “slavery and anarchy are antithetical concepts... From one viewpoint slavery is the only security against anarchy. From another anarchy is the surest antidote to

cent. *He would, however, when I made him six dollars, sometimes give me six cents, to encourage me.* (emphasis added)

Frederick Douglass, *Narrative of the Life of Frederick Douglass, an American Slave* (Boston: Anti-Slavery Office, 1845), 102.

³ Nozick, *Anarchy*, 292.

slavery.”⁴ In this view, by being an abolitionist, one was already not far from anarchism in a traditional sense. Abolitionists often considered themselves “individualists,” and many were anarchists, including the Christian anarchists about whom Perry writes. European anarchists also commonly made the comparison between slavery and government. In *The Slavery of Our Times*, Leo Tolstoy made clear that this comparison was a quite literal one:

If between the slaves and slave-owners of to-day it is difficult to draw as sharp a dividing line as that which separated the former slaves from their masters, and if among the slaves of today there are some who are only temporarily slaves and then become slave-owners, or some who, at one and the same time, are slaves and slave-owners or some who, at one and the same time, are slaves and slave-owners, this blending of the two classes at their points of contact does not upset the fact that the people of our time are divided into slaves and slave-owners as definitely as, in spite of the twilight, each twenty-four hours is divided into day and night.⁵

Anarchism must necessarily include abolitionism. Thus, Spooner’s transition from abolitionist to anarchist was not a move from one ideology to another, but rather a move to a more refined and dogmatic version of an ideology he already held.

Abolitionism, however, is a broader umbrella than anarchism. Many abolitionists were not anarchists. Historian Aileen S. Kraditor applies the term abolitionist to any “man or woman who belonged to an antislavery society... and who believed that slavery was a sin, that slaves should be freed immediately, unconditionally, and without expatriation or compensation to the owners, and who subscribed at least in theory to the doctrine of race equality.”⁶ In this broad group, she categorizes members into the subdivisions of “radicals” and “reformers,” where the latter group would unequivocally not be anarchists.⁷ Kraditor defines reformers as abolitionists who “considered Northern society fundamentally good and believed that abolition of slavery would eliminate a deviation from its essential goodness and thereby strengthen and preserve its basically moral arrangements.” A

⁴ Lewis Perry, *Radical Abolitionism: Anarchy and the Government of God in Antislavery Thought* (Knoxville, TN: University of Tennessee Press [1973] 1995), 23.

⁵ Leo Tolstoy, *The Slavery of Our Times* (Essex, England: Free Age Press, 1900), 65-66.

⁶ Aileen S. Kraditor, *Means and Ends in American Abolitionism: Garrison and His Critics on Strategy and Tactics, 1834-1850* (Chicago: I.R. Dee, 1989), 8.

⁷ Conventional histories refer to anybody who fits Kraditor’s broad definition as a “radical,” so it should be understood that her classification of a “radical abolitionist” is narrower.

radical, by contrast, was one “who, like [William Lloyd] Garrison, believed that American society, North as well as South, was fundamentally immoral, with slavery only the worst of its many sins.”⁸

This paper will demonstrate that Spooner was initially a reformer and that *The Unconstitutionality of Slavery* was a call for reformation. He wanted to end slavery in order to preserve the moral integrity of the constitutional republic. The label “radical” may apply to Spooner in a more colloquial sense due to the many sweeping changes he advocated in his writings on the Constitution, but he viewed these changes as each conforming to the Constitution, rather than overturning it, so this broader definition of “radical” is not applicable in the context of this paper. It was the *Dred Scott* decision that radicalized Spooner, according to Kraditor’s definition. However, radicals, again by her definition, only acknowledge an inherent immorality in the governing system and the desire to replace it, which does not limit radicalism exclusively to anarchism. Thus, Spooner’s anarchism—to the degree that it can be compared to that of the European anarchists and recognized as an anarchism of some sort—did not blossom until the Civil War.

Lysander Spooner, unlike some abolitionists, was hardly single-minded in his fight against injustice as he perceived it. He was born on January 19, 1808, in Athol, Massachusetts, to abolitionist parents. He worked on his father’s farm until the age of twenty-five, at which point he began his study of law under John Davis and Charles Allen. His first act directly challenging an unjust law came when he started his own legal practice in 1835 after only two years of legal study, defying a Massachusetts law that required either three or five years of study (the shorter term reserved for college graduates only). This act of civil disobedience was encouraged by his mentors.⁹ Spooner saw the law as arbitrary and harmful to the poor, and he published a petition to contest it. With help from Davis and Allen (then governor and state senator, respectively), the law was successfully repealed in 1836.

During the 1830s and 1840s, Spooner divided his time between seeking his fortune (unsuccessfully) and writing. His earliest writings were critiques of

⁸ Kraditor, *Means and Ends*, 8.

⁹ Davis and Allen undoubtedly had a profound influence on Spooner. They were both abolitionists, prominent lawyers from prestigious universities (Yale and Harvard, respectively), and principled politicians (Davis would later be one of only two senators to vote against the Mexican-American War). Charles Shively, “Biography and Introduction,” in *The Collected Works of Lysander Spooner: In Six Volumes*, vol. 1 (Weston, MA: M&S Press, 1971), 17.

Christianity, foreshadowing later anarchist critiques of European governments ruling through the superstition of “divine right.”¹⁰ After moving west to seek prosperity as a land speculator, he developed his novel concept of banking—wherein land, instead of specie, would be used as the commodity basis for money—and published “Constitutional Law, Relative to Credit, Currency, and Banking.”¹¹ He argued, consistent with the theme of all his constitutional analyses, that the government had no right to charter banks, prohibit private monies, or otherwise regulate currency, with the sole exception of coining specie money and setting the exchange ratio between gold and silver coins. Following the passage of the National Banking Act in 1864, Spooner would revisit this topic in his *Consideration for Bankers and Holders of United States Bonds*, in which he attempted to resurrect his land-bank proposal while condemning the criminal monetary policies passed to help fund the war. Without detailing all of Spooner’s critical works against the government, it is nonetheless apparent that his violent antipathy for slavery never prevented him from attacking lesser government injustices; crimes were only ever different in degree, but never in kind. Understanding that this mindset was a constant throughout his life makes it easier to explain how he could so dogmatically indict the postwar government for perpetuating a system of slavery not unlike the one it boasted of ending.

Spooner’s most important work was undeniably *The Unconstitutionality of Slavery*.¹² Published in 1845, it held as much personal significance for Spooner

¹⁰ In a footnote to “The Deist’s Reply to the Alleged Supernatural Evidences of Christianity,” Spooner accused the clergy of “enslaving the imagination of the young,” filling them “with vulgar and disgusting superstitions,” and making them “dupes, fools, slaves, cowards, bigots and fanatics.” Spooner, “Deist’s Reply,” *Collected Works*, vol. 1, 55. In “No Treason, No. II: The Constitution,” Spooner condemned the European monarchs because they “bribe a servile and corrupt priesthood to impress... upon the ignorant and superstitious” that “it is a religious duty of mankind to obey them.” *Ibid.*, 7.

¹¹ Spooner believed that because the quantity of land is static, it would prove a superior basis for paper-money banking. With the benefits of modern monetary theory, it is easy to identify the flaws of his system (such as land’s lack of uniformity and portability). Additionally, due to the abundance of land in the middle of the nineteenth century, Spooner’s proposal would ultimately have been inflationary. Given that he wrote this in 1843, however, Spooner can be forgiven for not recognizing these problems.

¹² This is to say it was Spooner’s most influential and widely read work during his lifetime. Many of his other works were simply overshadowed by the events of the period. Ideas about land banks and the post office, for example, were trivial in the minds of most people compared to questions surrounding slavery and the Civil War. Modern libertarians may cite *No Treason* as being more important. This may be true from a modern

as it did political significance for abolitionists who agreed that the Constitution prohibited slavery.¹³ In this piece, Spooner made an extensive legal argument that slavery had never been a constitutional institution. Although it was not the first constitutional critique of slavery, it was the first to make a profound legal case.¹⁴ Because Spooner adopted a “strict interpretation” approach to the Constitution, explicitly condemning any notion of original “intent” or original “interpretation” as being invalid regardless of their historical veracity, many people did not accept the premises upon which his arguments depended. In the case of some

philosophical perspective, but it is certainly not the case in the context of the nineteenth century. For additional evidence regarding his work on slavery, see footnotes 14 and 15.

¹³ The personal significance of this work might offer context for Spooner’s later, seditious indignation following the *Dred Scott* ruling, which officially rejected Spooner’s interpretation of slavery. The significance may be attributed to more than just his passion for liberating slaves. Immediately after publication, Spooner made a hasty trip to his family home to visit his mother on her deathbed. In a letter to George Bradburn, he recalls his mother’s reaction to seeing the published book two days before she died:

During those two days she was too sick to talk much, but she expressed great pleasure that my book was out and that it as [sic] thought likely to do so much good. She was one of the kindest of mothers, and one of the best of women. Almost all our family have been ardent abolitionists for years—And you will readily imagine that it was no slight consolation to me to have contributed in such a manner to the happiness of my family, and above all to the happiness of the last days of such a mother.

Lysander Spooner to George Bradburn, October 27, 1845. Last accessed April 17, 2016. Available through the LysanderSpooner.org digital archives of correspondence, at <http://static1.squarespace.com/static/55a3c833e4b07c31913e6eae/t/55a3f624e4b0114751b8f26a/1436808740376/NY41.pdf>.

¹⁴ William Goodell published *Views of American Constitutional Law and Its Bearing upon American Slavery* in 1844, arguing that Congress had the power to abolish slavery and guarantee slaves a republican government. After Spooner published his own work, many people found it to be the superior argument. In an open letter to Richard D. Webb, Edmund Quincy argued that many people would adhere to the constitutional justifications of slavery, and worried that “the common sense of mankind will be too much for all the responses of Mr. Goodell, or even of Mr. Spooner, who has pushed him off his tripod as the oracle of his [Liberty] Party.” *Liberator*, “Letter to Richard D. Webb,” vol. 17, no. 43, 170 (October 22, 1847), accessed April 17, 2016, <http://fair-use.org/the-liberator/1847/10/22/the-liberator-17-43.pdf>. Shively mistakenly attributes this quote to William Lloyd Garrison, who was in Cleveland and incapacitated from a “brain fever” when this issue of the journal was published.

abolitionists, such as William Lloyd Garrison, the arguments were dismissed as meaningless attempts to justify an unjustifiable document (ironic, given Spooner's later shift toward anarchism).¹⁵ Most importantly, though, Spooner's work did not go unrecognized.

Spooner's legal analysis applied to the Constitution appears to find his desired interpretation. That is not to say that his arguments are not valid; but in this case, they depend entirely on a number of premises that he establishes in the introductory chapters of the work. The first (and in understanding Spooner as a philosopher, the most important) is the premise of "natural law," which he details in the first chapter, "What Is Law?" At this point in Spooner's life, as far as can be inferred, Spooner still appeared to approve of constitutions in the general sense, and the failures of government as he recognized it were failures to adhere to the *text*, legally understood, of the US Constitution. However, even during this period, Spooner viewed the Constitution as entirely subject to natural law. As he defined it, "law" is "simply *the rule, principle, obligation or requirement of natural justice*" (italics in original).¹⁶ Natural law, being an extension of Lockean philosophy, was an idea that would consistently serve as a cornerstone of Spooner's thinking throughout his radicalization.¹⁷ Spooner viewed "law" in the legal sense as being no different from the scientific definition of the word. He asserted that it is "natural" and therefore must be "unalterable in its nature, and universal in its application" to be deemed law at all, and explicitly equates it to "physical laws" such as "the laws of motion, the laws of gravitation, the laws

¹⁵ Garrison acknowledged the "ingenious logic" of Spooner's reasoning regarding legal definition, but dismissed its practicality, writing in his review, "Of what avail are 'words, words, words,' however carefully selected or forcibly applied, against the known will, purpose and action of the people *en masse*, for seventy years?" Garrison saw Spooner's arguments rather as proof of the necessity of abandoning the Constitution and dissolving the Union. His arguments against Spooner resembled the later *No Treason* pamphlets, which conclude with Spooner's assertion that the Constitution "either authorized such a government as we have had, or has been powerless to prevent it. In either case, it is unfit to exist." *Liberator*, "Slavery Unconstitutional," vol. 15, no. 24, 134 (August 22, 1845). Last accessed April 17, 2016, available at <http://fair-use.org/the-liberator/1845/08/22/the-liberator-15-34.pdf>; Spooner, "No Treason, no. VI: The Constitution of No Authority," *Collected Works*, vol. 1, 59.

¹⁶ Spooner, "The Unconstitutionality of Slavery," *Collected Works*, vol. 4, 6.

¹⁷ Other Christian abolitionists often referred to this as the "higher law" doctrine.

of light, &c., &c.”¹⁸ Thus, justice is nothing more than protection of man’s natural rights. Spooner established this premise of natural law to assert that “*constitutional law, under any form of government, consists only of those principles of the written constitution, that are consistent with natural law, and man’s natural rights*” (italics in original).¹⁹

Defending any constitution that purported to violate natural law, then, would be unjustifiable. And in 1857, the Supreme Court’s ruling in *Dred Scott v. Sandford* would prove to Spooner that such a violation was indeed taking place. A corollary of the natural-law premise that Spooner established is that black slaves are, of course, human beings and therefore retain all natural rights. He did not seek to prove this premise, but rather implied that he assumed it to be axiomatic.²⁰ One of the more integral arguments in the book rested on the notion that the phrase “We the people” in the preamble of the Constitution necessarily established citizenship for everybody in the country at the time it was written, and since black slaves are people, this would include them as well. Judge Roger B. Taney’s decision arguing that blacks were never citizens and were not entitled to constitutional rights clearly contradicted Spooner’s view of natural law and rendered his arguments legally moot. Although Spooner never attributed any change in his thinking to the *Dred Scott* decision, his abolitionist writings demonstrate a marked change following the ruling, and it is reasonable to assume it had a significant impact on his thinking. It is also clear that these premises were viewed as the primary legal points to address in order to refute his argument as a whole. From a speech given by Senator Albert G. Brown of Mississippi, Spooner cited “evidence of the effect” of his work “upon the minds of lawyers.” After being exposed to Spooner’s work by Senator Henry Wilson of Massachusetts, Brown stated that “the book is ingeniously written” and that “if his premises were admitted... it would be a Herculean task to overturn his argument.” Spooner recognized this as an implicit denial of his premises and argued that “the only other promises [sic] that he would be likely to attempt to set up, are

¹⁸ Spooner, “The Unconstitutionality of Slavery,” *Collected Works*, vol. 4, 5–6. Long after his transition to anarchism, Spooner published “Natural Law, or the Science of Justice,” expanding on the ideas of this chapter but not altering the inherent philosophy.

¹⁹ *Ibid.*, 14.

²⁰ Modern sympathies, of course, might lend a greater degree of respect to Spooner for progressively assuming equality of races. Given the prominence of “inferior race” ideas and the “scientific racism” theory of the time, though, it is perhaps teleological not to acknowledge this assumed premise as an oversight in his argument, especially considering that many of the political leaders in slave states, at least rhetorically, were greater proponents of the philosophy of natural rights.

the palpably false and ridiculous ones assumed by the Sup. Court in the *Dred Scott* case.”²¹

The other premise Spooner established—in the second chapter, “Written Constitutions”—asserts that the only permissible interpretation of the Constitution is one that adheres precisely to the text as the terms are legally understood. He stated here that he would be interpreting the Constitution on the supposition “that all language must be construed ‘*strictly*’ in favor of natural right.”²² In this, he assumed (only, as he says, “for the sake of argument”) that laws violating his first premise can be valid. Even given this assumption, though, when a text is equivocal, the interpretation should always favor natural rights. He expanded on this argument in the ninth chapter, “The Intentions of the Convention,” when he disputed the idea that the so-called “original intent” of the Framers should be—or even can be—observed.²³ His argument here is largely a moral extension of the first two chapters of the book. The Framers knew slavery was a violation of natural and moral laws, Spooner asserted, so they deliberately worded the document in ambiguous terms despite knowing that the *legal* meaning of the words favored liberty.²⁴ This was the argument that Garrison, in his review, found the most absurd.

Given his two premises—that a Constitution should adhere to natural law and that only a strict legal meaning of the text should be observed—Spooner devoted the middle part of his book to making the legal arguments

²¹ Lysander Spooner to Gerrit Smith, September 10, 1857. Last accessed April 17, 2016. Available at <http://static1.squarespace.com/static/55a3c833e4b07c31913e6eae/t/55a4260ae4b0554abf387fcc/1436821002797/LT51.pdf>.

²² Spooner, “The Unconstitutionality of Slavery,” *Collected Works*, vol. 4, 17–18.

²³ Spooner provides footnotes demonstrating the unreliability of James Madison’s notes on the Philadelphia Convention as well as Johnathon Elliot’s collected records of the ratifying conventions. In modern scholarship, these remain the most widely cited sources for understanding the original intent and interpretation of the Constitution.

²⁴ Chapters 9 and 10 of the work are worth noting as they may be the only ones still containing arguments relevant to modern constitutional debates. Interpretations today can be generally divided into two camps: constitutional law, which favors legal precedent over original interpretation and is more likely to assert a “living document” approach to the Constitution; and originalism, which assumes written constitutions are static in their meaning and that the “spirit” of the law—that is, the original intent and understanding of the text—supersedes the “letter” of the law. Spooner uniquely asserts the originalist doctrine that the Constitution “means now what it did before it was ratified” but excoriates the idea of adhering to the spirit of the law in favor of the strict text.

themselves. He began by examining the precedents established in British law by examining colonial statutes and citing Lord Mansfield's ruling in *Somerset v. Stewart*, which ruled in 1772 that slavery was a violation of English liberty and natural law. Spooner then moved through the American secession, examining the early state constitutions, the Articles of Confederation, and finally the Constitution of the United States, the latter discussion taking up nearly as much space as the other twelve chapters of the book combined. Although he wrote a great many pages in these chapters, Spooner's arguments are often repetitive and can therefore be summarized briefly.²⁵ First, he established that the definition of the word "free" does not legally mean "not enslaved" but rather simply denotes a citizen (which, as previously mentioned, implied all the peoples of the United States according to Spooner's interpretation of the preamble), and the phrase "other persons" can only legally refer to aliens who have not yet become naturalized citizens.

Spooner proceeds to apply this argument to the three clauses of the Constitution that are typically interpreted to explicitly acknowledge slavery. Spooner claimed that because there are no explicit references to "slaves" or "slavery," the prevailing legal interpretation does not hold. In the Three-Fifths Clause, the explicit terminology can only apply to taxpaying aliens.²⁶ The Fugitive Slave Clause, likewise, only refers to people "held to service or labor," which Spooner claimed excludes the right to own property in men. As logical proof, he noted that many slaves were too old, young, or sick to actually do labor and therefore did not fit the description in the text. He then dismissed the Slave Trade Clause by dissecting the word "importation," which, Spooner argued, can apply to anybody on a ship. Therefore, any classification of imported people as slaves is based entirely on the recognition of foreign laws. Finally, Spooner claimed that the Constitution guarantees to all people the right to bear arms, which implies a slave's right to take up arms against his master, and the right of habeas corpus, which would entitle every

²⁵ Spooner's repetitiveness may be more generously referred to as "thoroughness." For instance, in his argument regarding Article 4, Section 2 of the Constitution (the Fugitive Slave Clause), Spooner focused on the words "held to service or labor." He then devoted lengthy enumerated arguments to analyzing these words from every conceivable angle, first analyzing and redefining the phrase, and then applying it to the federal government, the state governments, and the Constitution itself. The arguments, whether valid or not, are largely the same, but Spooner applies them individually to each specific legal category. Thus, in the interest of brevity, it is easier to condense his arguments into their more generally applicable points.

²⁶ In addition to referring to "other persons," this clause mentions "those bound to Service for a Term of Years," which implies a voluntary contract, in Spooner's view.

slave held in bondage (effectively a manner of imprisonment) to a trial by a jury of his peers, who, logically, would have to be slaves (unless slaveholders were to make the concession that they were the “peers” of an “inferior race”).

Spooner also makes a number of minor legal arguments, but they are of little consequence regarding Spooner’s transition toward anarchism. For that, the first, ninth, and tenth chapters are the most illuminating because they establish the seeds of anarchism in his arguments regarding natural law, the nefariousness of the Framers’ equivocation of terms, and the practices of the government itself. One other point worth noting—which is completely unimportant for his argument but informative on the question of Spooner’s anarchism—is his response to the “slave argument” following his analysis of the Three-Fifths Clause. He wrote that the arguments supporting slavery amount to nothing but “contradictions, absurdities, impossibilities, indiscriminate slavery, *anarchy, and the destruction of the very government which the constitution was designed to establish*” (emphasis added).²⁷ Spooner’s reference to the destruction of the government as an evil effect of the slave argument indicates that he was not yet an anarchist in theory or in name, given his use of the word “anarchy” with a distinctly negative connotation.²⁸

Following the *Dred Scott* ruling, Spooner’s abolitionist writings became demonstrably more radical. In 1858, he published a broadside that he referred to as his “manifesto” with the subtitle “A Plan for the Abolition of Slavery,”

²⁷ Spooner, “The Unconstitutionality of Slavery,” *Collected Works*, vol. 4, 81.

²⁸ The distinction between an “anarchist in theory” and “anarchist in name” is important in untangling anarchist intellectual history. There is no record of Lysander Spooner ever referring to himself as an anarchist, though by the time he completed his theoretical transition to anarchism, he was associating and publishing with people who did, most notably his eventual eulogist Benjamin Tucker. Many theoretical anarchists, though, deliberately avoided the label because of its association with the violent socialist anarchists (whom Tucker often accused of being “anarchists in name only”). Examples of this would be Josiah Warren (one of Spooner’s closest friends in Boston), Gustave de Molinari (a French liberal), Leo Tolstoy, and British liberal Auberon Herbert. Herbert, like Spooner, wrote for Benjamin Tucker’s periodical *Liberty* and was said by Tucker at his funeral to be an “anarchist in everything but name.” At the publication of *The Unconstitutionality of Slavery*, Spooner appears to have been an anarchist in neither name nor theory. His later transition into anarchism would qualify him, like Herbert, as an “anarchist in everything but name,” though, given that Tucker gave eulogies for both men and did not apply this label to Spooner, it can be reasonably inferred that he likely acknowledged the label to apply at least to the other Boston anarchists.

intended for Northern readers, and the title “To the Non-Slaveholders of the South,” revealing the other intended audience. He sought funding to mail this manifesto to as many people as possible, hoping to incite slave rebellions supported by associations of antislavery whites. Prior to John Brown’s raid on Harper’s Ferry, Brown asked Spooner to cease circulation, and Spooner immediately “desisted wholly from the distribution of it in the South” because he was “unwilling to embarrass [Brown in his raid].”²⁹ In the essay, Spooner advocated that people “ignore and spurn the authority of all the corrupt and tyrannical political institutions” and called “the state of slavery a state of war. In this case it is a *just war*, on the part of the negroes—a war for liberty.”³⁰ Spooner asserted, too, that “if the American governments, State or national, would abolish Slavery, we would leave the work in their hands,” but absent this he proposed “to *force* them to do it, or to do it ourselves in defiance of them.”³¹ At this point, it is unclear whether he was yet ready to abandon all government, but he was certainly ready to defy the constitutional government of the United States.

By publishing his *No Treason* pamphlets, Spooner made it clear he accepted anarchism, but it would be a mistake to overlook his letter to Charles Sumner. Sumner was among the more radical antislavery Republicans and, following his brutal beating by Preston Brooks, a hero among many abolitionists. It is perplexing why Spooner sent Sumner, of all people, an excoriating letter in 1864 blaming him for the war and accusing him of treason. His arguments in that letter are important, though, and anticipate many of the more fully developed ones made in *No Treason*; in fact, his entire case rested on the moral justification of supporting the Constitution.

Sumner was a greater villain, in Spooner’s eyes, than the proslavery statesmen in the South. Had Sumner accepted Spooner’s interpretation of the Constitution regarding slavery, he would be blameless. However, by rejecting Spooner’s view and acknowledging the constitutionality of slavery, he proved that his “bombastic pretensions of zeal for freedom” were lies and that he was a “deliberately perjured traitor to the constitution, to liberty, and truth.”³² In this, he was guilty of treason, as Spooner later defined it in “No Treason no. II: The Constitution,” and the Southerners were innocent. “A traitor,”

²⁹ Lysander Spooner to O. B. Frothingham, February 26, 1878. Last accessed April 18, 2016. Available at <http://static1.squarespace.com/static/55a3c833e4b07c31913e6eae/t/55a40bece4b0f856da3dd7ca/1436814316825/Confidential.pdf>.

³⁰ Spooner, “To the Non-Slaveholders of the South,” *Collected Works*, vol. 4.

³¹ Spooner, “A Plan for the Abolition of Slavery,” *Collected Works*, vol. 4.

³² Spooner, “Letter to Charles Sumner,” *Collected Works*, vol. 4.

Spooner wrote, “is a betrayer—one who practices injury, *while professing friendship*,” but “an open enemy, however criminal in other respects, is no traitor” (italics in original).³³ For this reason, Spooner blamed Sumner and “other such professed advocates of liberty as... Henry Wilson, William H. Seward, Salmon P. Chase, and the like” for legitimizing the Southern cause in the war. Spooner believed that “for selfish purposes,” they denied what they knew to be morally true, “and thus conceded to the slaveholders the benefit of an argument upon which they had no claim”—namely, that they were fighting for liberty. Whatever their crimes, the slaveholders “acted only in accordance with their associations, interests, and avowed principles as slaveholders,” and therefore it is on the hands of the antislavery Republicans who defended the constitutionality of slavery that “rests the blood of this horrible, unnecessary, and therefore guilty war.” If they truly believed their interpretation of the Constitution, they should have abandoned their support of the Constitution, as “it would prove the constitution unworthy of having one drop of blood shed in its support.”³⁴

Much of Spooner’s reasoning in the *No Treason* pamphlets helps explain why he condemned Sumner, but more importantly, the pamphlets developed the *philosophical* basis of Spooner’s critiques of Sumner. Spooner only published three *No Treason* pamphlets, numbers 1, 2, and 6.³⁵ They most clearly explain Spooner’s anarchist motivation for abandoning the Constitution and, by logical extension as detailed in the final pamphlet, the government itself. Because these works retrospectively explain his letter to Sumner, it can be argued that the letter was his first written expression of his anarchism. The works also make clear that the Civil War was the driving reason for Spooner’s move into anarchism; he repeatedly cited the war as an example for his philosophical critique of government. Thus, if the *Dred Scott* ruling served to radicalize Spooner, the Civil War served to “anarchize” him.

The first and shortest *No Treason* pamphlet, which has no subtitle, serves as an introduction to the incomplete series. Spooner clarified his logical transition since 1845. He begins by establishing that the principle of the war is to compel men to submit, and because this principle came from a government that professed itself to be based on consent, this was an

³³ Spooner, “No Treason No. II: The Constitution,” *Collected Works*, vol. 1, 8.

³⁴ Spooner, “Letter to Charles Sumner,” *Collected Works*, vol. 4.

³⁵ On the copyright page of no. 6, Spooner notes that for “reasons not necessary to be explained, the *sixth* is now published in advance of the third, fourth and fifth.” The latter three were never written.

“astonishing absurdity and self-contradiction.”³⁶ By doing this, the men in the government demonstrated that they believed power to be their right, a right that, of course, stood in complete opposition to natural rights. Mirroring his condemnation of Sumner, Spooner argued that “all the pretence of any necessity for consent... is... forever expunged from the minds of the people” because the North had proven that its government “will expend more life and treasure in crushing dissent, than any government, openly founded on force, has ever done.”³⁷ His critique of the war serves as an introduction to his philosophical argument as to the implications of consent. This predominantly explains what has come to be known as the “tyranny of the majority” argument against democracies and, in this case, republics. He then examines how something called a “nation” can come into existence at all, and concludes that it is either by “force, or fraud, or both,” or by consent.³⁸ The Civil War demonstrated unequivocally that the US government was the product of the former. Revisiting the implications of consent in his conclusion, Spooner pointed out that the colonists had no constitutional authority to secede from Britain but, realizing they were the equals of King George III, they recognized that he had no moral authority to stop them. If this were true for the colonists, it was equally true for the Southern states, regardless of whatever other sins they were guilty of.

Spooner continued this argument in “No Treason, no. II: The Constitution.” In it, he repeated arguments made in *The Unconstitutionality of Slavery* regarding the phrase “We the people” in the Constitution’s preamble, but extended his argument beyond merely the implication that blacks were made citizens by it. In addition, he argued that the Constitution implies voluntary consent to its authority, but because nobody alive—and very few people even at the time it was established—was even given any opportunity to consent to it, the Constitution had no validity as a contract. Spooner proceeded to dissect the fallacious argument that voting implies consent. In the next section, he defined and analyzed treason, which clarifies his accusation of Sumner being a traitor while the slaveholders were innocent of treason. In the particularly anarchistic seventh and ninth sections, Spooner argued that taxation in every form is robbery unless it is exercised with consent, and voting is an act of violence exercised against weaker parties. Applying this logic again to the Civil War, he condemned both the North and South, explaining that the North was guilty of imposing a nonconsensual government at the national level, whereas the South was doing the same thing

³⁶ Spooner, “No Treason, No. I,” *Collected Works*, vol. 1, 6.

³⁷ *Ibid.*, 5–6.

³⁸ *Ibid.*, 10.

at the state level. He then used all these arguments to prove that the Constitution “was gotten up by swindlers... who said a great many good things, which they did not mean, and meant a great many bad things, which they dared not say,” and it was this “swindle” that “culminated in a war that has cost a million of lives... carried on, upon one side, for chattel slavery, and on the other for political slavery; upon neither for liberty, justice, or truth.”³⁹ Therefore, the Constitution is the product of fraud, and the consent of the oppressed is “presumed.” He proved the validity of his comparison between chattel and political slavery by arguing that “the holder of chattel slaves [might] attempt to justify himself by presuming that they consent to his authority.”⁴⁰ By defending this unholy document, Spooner clarified how he could—despite his vehement hatred for slavery—denounce Sumner and other radical Republicans as being guilty of the same moral sins as the slaveholders.

The final *No Treason* pamphlet, “The Constitution of No Authority,” combines all of the previous *No Treason* arguments (including, apparently, the arguments in the three unpublished pamphlets) to denounce government in general. Many of Spooner’s previous arguments are repeated and expanded. After building all of his previous arguments about natural law, treason, and the Constitution, he attempted to prove that the government had never been one of consent by reflecting upon the question of who owns government power. He condemned “secret ballots” as disguising the identity of the government (given the traditional American pretense that the government is the people) by showing that through this means, if the government demands submission, the victim cannot know to whom he is submitting. Therefore, the guilty parties are the enforcers of government and, even more so, those who fund the government—the wealthy bankers loaning money to violent governments for profitable returns. In the case of the Civil War, this was done to “monopolize the Southern markets, to maintain their industrial and commercial control over the South.”⁴¹ Spooner condemned the Union government for not abolishing slavery before the war, arguing that it could never have existed without the force of government, and for only abolishing it when they did “as a war measure” and because they wanted the “assistance [of the black man], and that of his friends, in carrying on the war they had undertaken for maintaining and intensifying that political, commercial, and industrial slavery, to which they have subjected the great body of the people,

³⁹ *Ibid.*, 14–15.

⁴⁰ *Ibid.*, 16.

⁴¹ Spooner, “No Treason, No. VI,” *Collected Works*, vol. 1, 54.

both white and black.”⁴² This, Spooner said, was inherent in bromides such as “We saved the country” and “We preserved our glorious union!” He asserted, then, that “there was no difference of principle—but only of degree—between the slavery they boast they have abolished, and the slavery they were fighting to preserve.”⁴³ The tale of the slave, at least as it played out in Spooner’s eyes, was complete.

Lysander Spooner was nothing if not principled. He considered it vital that his moral and legal logic were always compatible with each other, and his philosophy of natural law is apparent in his earliest legal writings. Thus, the seeds of his anarchism were already beginning to blossom by the time he wrote *The Unconstitutionality of Slavery*, although it would be another two decades before they would bloom into the dogmatic anarchism for which he is still known. While writing this book, he was recognizably Jeffersonian,⁴⁴ and it is clear he still held a relatively traditional American belief in limited government and a constitutional republic. Furthermore, he was happy to attempt to effect change through civil disobedience and legal action. The *Dred Scott* decision rapidly radicalized him, pushing him toward the ideas of John Brown: violent emancipation justified by the violence of slavery, and the apparent failures of the government to fulfill its most fundamental obligations of protecting life, liberty, and property for the black population. At this point, Spooner may be thought of as a radical and a revolutionary, and he was ready to throw out the Constitution as a document unworthy of defense, but he was not yet an anarchist. This final change came with the Civil War, in which Spooner observed the North fighting a war intended to subjugate the South, rather than to liberate the slaves. In this, it was guiltier than the slaveholders, because at least they acknowledged and adhered to their principles, however abhorrent, whereas the North maintained the facade of consent. The result of this was death on a massive scale, and the emancipation of the slaves was no more than political strategy. Spooner’s anarchistic fury is first seen in his 1864 letter to Charles Sumner, in which his anarchistic views are not made explicit. Yet his condemnations are based on

⁴² Ibid., 57.

⁴³ Ibid.

⁴⁴ Benjamin Tucker, in fact, once claimed that “the Anarchists are simply unterrified Jeffersonian Democrats,” so Spooner’s transition to anarchism may be viewed as a more dogmatic acceptance of the philosophy to which he already adhered. Benjamin Tucker, “State Socialism and Anarchism: How Far They Agree, and Wherein They Differ,” *Liberty* 5, no. 16 (1888). Last accessed November 14, 2016. Available at <https://docs.google.com/viewerng/viewer?url=http://library.libertarian-labyrinth.org/files/original/95e578f9b052a0e91222e126ebe61051.pdf>.

arguments he later explained in his three *No Treason* pamphlets, which make it exceptionally clear that he was now an anarchist in full and that the Civil War was the catalyst for this change in views. He was forced to conclude that the politics of the North, rather than abolishing slavery, only ensured that the institution was extended to all peoples.

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