

Philadelphia, April 12, 1845 [?]

Dear Sir,

I had intended sooner to _____ briefly to offer the view which I have of Mr. Spooner's book. It is, that it downplays much _____ plausible, but not convincing. - He affirms to hold to the same definition of law which I would give vis. [?]. That law is the rule which is to govern the conduct of individuals, & especially to govern judges & other public offices, in their _____. He says this rule "is an intelligent principle of right, necessarily resulting from the notion of man; & not an arbitrary rule, that can be established by mere will, number, or power." I hold, on the contrary, that it ever must be established by the power of the strongest, either in influence or in physical power, & must, of necessity be arbitrary; because human wisdom & virtue is (are) not _____ to determine & pursue readily [?] the highest rule of justice in every particular.

In every inferior Judges & Justice of the Peace sheriff [?] _____ & tax collector _____ to decide for himself what is right, arbitrarily, what is, what the law might to be, & govern his official conduct accordingly, society would collapse at once into _____. No civilized community ever did or ever will (_____) adopt a [?] declaration [?] a rule of action. No such community would endure such a government for a _____ month[?]. The law would vary with every magistrate & in _____, with different parties before the same magistrate; for personal particularities would bias & change his judgment.

But it may be his view that the Supreme Court is to be the only Judges of _____ & right, & regulate every sheriff so as to conform to its own view of the highest justice; that is, to make the law to be such as, in its opinion, the law ought to be.

This would not obviate the difficulty, nor sustain [?] the opinion of Mr. S., for if the people chose to concede such authority to a Supreme Court, then that Supreme Court would be, when backed by the sword or by numbers, the strongest power: its will would be law; but, as _____ has proved, & a knowledge of human frailty must _____, its decisions although hard [?], would be often any thing rather than justice. It would be a tyranny as bad as that of the thirty tyrants of Athens; & no people would long submit to it. If the Judges were appointed for life, the people would dismiss them by insurrection or a charge of the constitution: & if they were appointed for a limited honor [?], they would not reappoint them, but first others in their place who would conform to the will of the sovereign power, vis. either force or numbers. Force or numbers must, of necessity, be the ultimate _____, & I think it would be far

from an improvement to permit the Supreme Court to make the law in conformity to its own views of justice, rather than to expound the law in conformity to the views of the peoples as expressed in the constitution, & laws [?] enacted in consistency with it, by the popular representatives. Moreover, men cannot, in good faith, take the office of Judges, & undertake to annul the constitution & statutes whenever they depart from their own views of justice; for the Judges are the appointed agents of the people, to perform a particular service, & every one knows that the American people never intended that they should perform such a service as that.

I dissent too, from the opinion that slavery had no legalized _____ in this country prior to the declaration of independence. The acts of Parliament concerning the slave trade, the _____, the _____ decisions, & the popular _____, had made it law as much as most things are law, which we have called.

Nor do I agree that every principle enunciated in the declaration of independence became law, or was entrusted [?] by a single _____ of the higher to become so. Most of the instrument is merely perambulatory[?], & the only part that was designed or has ever been construed to have the form of law is the part which declares the States independent of the British Crown, & even that part was probably _____ to derive its authority from the satisfaction of the State Legislatures; as the Congress was rather a consulting than a legislating body.

But admitting the correctness of Mr. S's views, that slavery did not legally exist before the declaration of independence, or that if it did before _____ that instrument was designed to abolish it; still I could not admit that our present Supreme Court or Congress would have a constitutional right to abolish it practically, through the writ of Habeas Corpus or otherwise; because I believe it was not designed, nor would it be _____ to that national government in any department, should undertake the construction of the _____ Constitutions & laws, & overrule all the State tribunals in their decisions as to what those laws were. The decisions of the State tribunals have always properly been deemed _____ or to which one the State _____; & when the question of whether a _____ is held to _____ by the laws of a State, decisions of the State Court are to determine what those laws are.

I may here remark that if a Judge's notion of right are to regulate his judicial conduct, then, if slavery should be abolished either by a change of the constitution of the Union or by a legislation [?] and of a rule [?], a Judge who holds _____ the divine right of slaveholding might refer to _____ & law or habeas corpus, on the ground that the act of abolition was unjust; & therefore not law: and rumor of our religious bigots would soon insist that _____ should be _____ with death, & _____ terminated by force of the _____ and of _____. I am well persuaded that not a _____

are of them who hold that slavery has no legal existence, should recognize the course of reasoning which he now adopts, if it had been introduced to support a measure which he was approved to.

Dawner [?] warrants the language of the articles of confederation might have been, I believe that the term "free inhabitants," of work in Chap. 7 by Mr. S. was both intended & understood [?] to mean, inhabitants who were not slaves, or at least, that slaves were among the persons understood [?] to be excepted from the privilege, otherwise[?] ____.

All laws must of necessity be construed with deference [?] to the ____ of the society when they were framed. Any other ____ would make ____ decisions mere ____: & this principle of construction is fully recognized in the doctrine universally held, that in the construction (of) a law the courts should consider the mischief the the law was intended to remedy. To construe laws merely by the Judge's opinion of the signification of the words, without ____ out of the ____ to find a meaning for them, would create as much controversy as to what was the meaning of the law, as there is now as to what is the meaning of the scriptures. All sensible ____ on the scriptures construe them by the aid of ____ lights [?] or they can obtain as to the state of ____ when they were written. This practice is found in the essays of our abolitionists against the alleged sanction of slavery in the bible.

Mr. S. says that to say that the constitution intended to sanction slavery is the same thing as to say that it did sanction it. In this I agree with him fully; I having no doubt that it intended to sanction it. I can of course have no doubt that it did sanction it. -He, however, makes a distinction between the intention of the makers of the constitution & the intention of the constitution itself. I can make no such distinction, at least not to the extent that I infer he would make it. If we are clearly satisfied that the works of the constitution meant that it should have a certain construction, then that is its true construction of meaning. ____ doubt as to their intentions, then we may also ____, & then only, as to its true construction. - By the makers of the constitution I include both the framers & the ratifiers [?] of the instrument, & I have not a shadow of doubt that both understood it as upholding, to a certain extent, both slavery & the ____ ____; & most unequivocally as contemplating the continuance of slavery under it in the clause relating to representation & location.

He says that this meaning can only be gathered by "internal [?] evidence," & that "legal minds [?] of interpretation refute all aid of exterior evidence." --- But we do not know the meaning of any word or sentence otherwise than by exterior evidence. Words & phrases have no intrinsic ____ of expression sufficient to ____ for a moment. And legal rules of interpretation expressly sanction this reference to exterior evidence, in the principle ____ down by

Blackstone. That the courts must consider the mischief that existed & was presumably intended to be remedied. Congress & the Courts _____ with entire unanimity, that the mischief that was intended to be remedied was the _____ of fugitive slaves; & the decision of those who lived at the time ought to be & is considered conclusive; in reference to ambiguous language (though I cannot _____ the language ambiguous in this case): -- inasmuch as they must know better than _____ what was the mischief in public contemplation, when the law was made. Mr. S. objects [?] to taking historical evidence to aid in the construction of a law, but we must take it if posterity is to construe the law the reference to the mischief intended to be remedied, although we have no occasion to look it here [?], because the unanimous construction of those who lived at the time, I had no occasion to resort to history in conclusion or to the mischief & the remedy.

I _____ is continually changing in meaning, & hence we must resort to historical evidence for the construction of ancient writings.

All the rules of construction brought in question are only applicable to remove doubts, as to the meaning of the makers of the law. Now, I can have no doubts, & those who lived at the time never had any, as to this matter. I know that the intentions of the people have been questioned, but I can have no doubt on the support, in consideration of the action of Congress & the Judiciary, without a word of protest from any quarter, immediately after the ratification of the constitution.

Whether the theories upon this & other questions connected with abolition, be right or wrong, it is certain that it is not well to waste our strength in endeavoring to introduce remedies _____ to abolition, which it will be more _____ than the effort[?] abolition itself.

I think it far easier to abolish slavery than to change the construction of the constitution on this point: for _____ to abolish slavery, then to abolish voting or the union _____ to abolish slavery, through the action of the old parties, than to bring into _____ a party based on the _____ question of abolition, or _____, any party, except _____ of the old over, in substance, whether in name or not: easier to abolish slavery _____ than the internal slave trade: easier to abolish slavery than to induce the people to abstain from slave _____: presumably easier to abolish it in the Union at large than in the District of Columbia alone: easier than to keep a country like Texas out of the Union; as than to bring the churches right, & prevent communion with slaveholders. And, of course, I think that much of the effort of abolitionist is _____, in working to effect that which is most easy, by first collecting, as a man instrumentally that which is more difficult.

The proper course is, in my opinion, to petition continually & universally both congress & the Legislature, for nothing short of entire abolition, through a change of the Court ____: to much abolition which I vote for them, willing or them all persons on the other tickets where will go for abolition. We have fewer abolition newspapers, & publish mrole abolition in the messages of the day: and to take man as his is, & conform to his numbers [?] judgment & habits, neither to expect the miracle o making him _____, & to ask _____ in such a manner, as has never been done before.

Those who _____ their professions of _____ too high always sink their practice below that of others: in the _____ who object to writing at all, or account of slavery labor more _____ forth _____ of _____ Whigs: & the Liberty Party, who assured [?] the extravagant rich of voting for no man who would give his private vote at the polls for any but an abolitionist, have fallen, in New Hampshire, to voting for those who not only vote for slaveholders themselves, but are not even professed abolitionists personally; --- and, judging from past history, the approaching region of the New _____ is _____ will exhibit an immense departure from the avowed principle of the Liberty Party, on the part of those who have been chosen to represent it. I hope for _____ better, but my fears are stronger than my hopes. The Whigs have swallowed up every third party startd [?] hitherto, & the "Independence democracy" of Mr. Whton[?] (late of Nantucket [?]), Mr. Goodwin [?], the Whig candidate for Congress & Aurea Greeley [?] is Gary is busy in arranging the atmosphere for others _____ him.

From an extensive experiment [?] made here, he conclude that about three fourths of war population _____ willing to _____ for the entire extinction of slavery, by a change of the contribution of those a lower [?] majority prefer the petitions which prefer compensation. I think the abolitionists of the country might collect a million of _____ in December next. If they would[?] do _____ would be worth all their labor in any _____ upon _____.

By the _____ on of the _____ of _____, the Abolitionists would _____ allow irresistible.

Yours very truly,

Thomas Earle