

Worcester July 5, 1849

Gerrit Smith, Esq.

Dear Sir,

I received your letter but yesterday - and answer it early as possible. I thank you both for the money and the kind words.

In regard to the fourth and 5<sup>th</sup> Amendments. They refer to the action of government - state, or national, or both - but whether to one or both, certainly to the action of government, and to that alone- not to the acts of private persons.

Slaveholding is not an act of the government - it is merely a private crime committed by one person against another- like theft, robbery or murder. The government "allows" slaveholding - that is, it does not punish it- but the government itself, neither state nor national, holds any slaves. It requires no man to hold another in slavery. It is willing the slaves should all escape from their masters, if they can. It (the state government certainly) will not run after them, or bring them back. The masters only deprive the slaves of their liberty. They hold them, as they do their horses, but brute force. They pretend to do this by virtue of what they call the right of property - that is, their right of personal dominion - for the right of property is simply the right of personal dominion. And the government assents to all this - is willing it should be so - will not interfere to prevent it. Nevertheless, the government itself holds none of these men in slavery.

If, then, slaveholding be a mere private crime committed by one man against another, the provision against depriving a man of his "liberty," "without due process of law," no more applies to a slaveholder, than the provision (in the same clause) against depriving a man of his "life" "without due process of law," applies to a murderer or than the provision against depriving a man of his "property" "without due process of law," applies to a thief.

The object of the amendment is to secure to every accused person, and every person who shall be punished, or restrained, of his liberty, by the government, the benefit of a regular judicial trial. It forbids all arbitrary or summary executions, imprisonments, fines, by the government, without first giving the defendant the benefit of the protection of the laws, as administered by the judiciary. But it has nothing to do with the trespasses of one private person against another, whether they be murders, thefts, strifes, or violence of any kind.

The sin of the government (whether state or national), in the matter of slavery, is not that itself holds men in bondage, but that it refuses to interfere to protect them in their liberty- that it, in effect, suspends the habeus corpus, so far as those individuals are concerned, and thus leaves them at the mercy, or rather, in the power, of whomsoever is stronger than they.

Suppose a state should refuse to punish the crime of murder, or to restrain men in any way from its commission - you would not say that, in so doing, the government itself committed murder, in violation of the provision which forbids it (this government) to deprive any man of his "life" "without due process of law." Or suppose the government should refuse to punish theft, or to restrain in any way the commission of it, you would not say that the government itself thereby committed theft, in violation of the prohibition against depriving any man of his "property" "without due process of law." For the same reason, we cannot say, because the government refuses to punish slaveholders, or to restrain slaveholding, or to deliver the slaves out of the power of their masters, that the government itself deprives the slaves of their liberty in violation of the prohibition against depriving men of their "liberty," "without due process of law."

The same argument applies to the 4<sup>th</sup> Amendment as to the 5<sup>th</sup>. The government (not individuals) shall not violate the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures tc tc. If a private person, a burglar, were to break into a house, seize and search the inmates and all their papers and effects, we should not think of the act as a violation of this amendment, ad why? Because this amendment applies to the government, and not to private persons. So

if a slaveholder breaks into a negrod's cabin, and seizes and searches him , his wife, and children, and every thing in the house, we cannot say that the act was forbidden by this provision against violating the rights of the people to ve secure in their houses, persons, papers and effects, against unreasonable searches and seizures because the provision applies to the acts of government only, not to the acts of private individuals. But if a government officer should seize and search a man's person, or papers without proper authority, as Recorder Morris was accused (justly or unjustly) of doing, in the case of the Glentworth papers, this prohibition would apply to the states government.

If you just look at the whole of the 4<sup>th</sup> and 5<sup>th</sup> amendments, and indeed at all the others, you will see at once that they relate only to the acts of government, and not to the crimes of private persons.

If this view be correct, it is of no consequence whether the amendments apply to the state governments, or only to the national. I think, however, they apply only to the national - with the exception of the 2<sup>nd</sup> amendment, (against the infringing of the right of the people to keep and bear arms,) which I think applies to both governments. And I have written an argument for my "third part," to prove that it applies to both governments - admitting that others do not.

To go into the argument at length, and show why the 2<sup>nd</sup> amendment applies to both governments, and the others only to the national, would require a large space - and if you are satisfied that the argument I have here given you is sound, (as I can hardly doubt you will be), you will not desire me, in this place, to give you the other.

If, however, you are not satisfied that this argument is sound, I will try to give you a synopsis, at least, of the argument against the amendments (except the second) applying to the state governments.

And now, if the foregoing argument is satisfactory, (not

otherwise), I wish to inquire whether, on the principle you lay down, that I ought to be paid for my labors, I ought not to charge you something for this opinion? You know I would be glad to give you this opinion, and forty more - as I would be glad to give all my opinions to all the world - free of charge, if I could do it and live - but it has come to that that I cannot live, except as a beggar, unless I can get something for my labor - and thing, which, thus far in my life, I can hardly say that I have ever done. I have spent much time, and contracted debts, (which I fear I shall never pay), in getting an education that should qualify me for giving opinions that men could afford to pay for. If those opinions are now valuable to any body, that is able to pay for them, I am obliged to make the valuable to myself. It is true you want this opinion to guide you in your labors and expenditures for others, and not for yourself. But you wish these labors and expenditures to be well directed, and if, in order that they may be so, legal advice becomes necessary, it is as good economy to take such advice at its cost, as to take legal advice in one's private business.

Nevertheless, I am mortified almost beyond endurance at being obliged to make this suggestion - and especially at this time when so many reasons dipreads? \_\_\_\_\_ me from it. But want has made me desperate, and I have no alternative. Still I do not wish it, unless you think it perfectly right. And by no means am I willing to accept the smallest sum, unless you are satisfied the opinion is correct.

And now, while I have my hand in, or rather, while I have the brass on, I wish to say that I have long thoughts I could give you, some other opinions on law and political economy, especially in regard to "land reforms", that would save you some of the expenditures of time, and money, which you are making, but which it seems demonstrable to me, will fail of their objects. I think you doctrines of "land limitation" and "inalienable homestead" are in violation of the best principles of both out national and state constitutions, that they are also in violation of natural law and moreover would cause many times more poverty than they would prevent. I should like to write some essays to prove these points, but could not do it without pay. If I could get enough for them to enable me to go on with my postage porject, I should like to write them.

If you still have any doubts, as your letter seems to imply, relative to the importation clause, I shall have a chapter in my "third part" (if ever it be published) that will entirely put to

flight all doubts on that point - as well as some other points, in regard to which I find some persons are still in a fog.

Very respectfully,

Your obedient servant.

Lysander Spooner

Worcester, Mass.     June 25, 1849

Gerrit Smith, Esq.

Dear Sir,

I take the liberty to send you herewith my argument on the Post office laws, which I believe you have read heretofore, and also a pamphlet entitled "Who Caused the Reduction of Postage in 1845?", which I beg you will read. The letter is in proof sheets, the pamphlet not being yet published.

I also send copies of some certificates, of lawyers and others, several of whom have examined these pamphlets.

You will see, from these papers, that some persons think the public, and especially the merchants, ought to make me some compensation for my services and losses in accomplishing the reduction of postage. The idea was started by others, without any intimation from me. But it seems to be just, and I have now become much interested in its success. The English gave Rowland Hill a fortune, and I think on the same grounds the people of this country should pay me something. And I think they will do it, if the subject should be brought before them in the proper manner.

The matter has been in hand some seven or eight months but for want of means has moved at a snail's pace. My friends, what few I have, contributed two, three, and five dollars each, as they were able, to meet the expenses thus far. But that resource is exhausted - and unless I can raise \$200, the thing is likely to fail altogether.

I have sent my pamphlets to five of the largest merchants in Boston, with a request that they would contribute. But no one of them, so far as they have informed me, have even read them. I do not blame them for this, nor wonder at it. They are continually pressed with applications. I am a stranger to them. They cannot spend time to examine into the merits of applications coming from strangers. I had not means to access them through the agency of persons whom they knew, and on whose representations they could rely. Of course the applications failed, as I expected they would. I made them, not because I had any real confidence that they would be attended to, but because I thought it possible they might be, and because some of my friends had more confidence than I had.

One of these merchants however, Robert G. Shaw caused a note to be written to me, excusing himself from reading the pamphlets, on account of the state of his eyes, but intimating his opinion that the merchants would contribute, if it should be shown to them that I had caused the reduction of postage.

My plan is this. I consider it very important to establish the fact that, in setting up my private mails, I was proceeding lawfully, in other words, that the law prohibiting private mails was unconstitutional, and that my own argument on that point is conclusive. If I establish that point, I account for the fact that the government were compelled to reduce the postage, and I shall also compel a still further reduction, and perhaps even practically, "abolish the government monopoly. To establish this point I wish to get the opinions of Mr. Webster and one or two other lawyers- and I suppose I cannot get them without money. Mr. Choate gave his freely because he was already familiar with my argument, having formerly had occasion to examine it when engaged in defending his suits on that ground. But the other opinions are not given in decided terms. Lawyers are naturally unwilling to spend much time in forming, or to take much responsibility in giving, opinions, for which they receive no pay. It is for these reasons undoubtedly that Mr. Seward declines to examine the subject with any care, although

he expresses himself favorably to the object.

Under these circumstances I cannot expect a decided opinion from Mr. Webster, not can I with propriety even ask his opinion, without paying him for reading my argument. And the same substantially may be said of B.T. Butler, and any others, whom I may wish to ask. Yet, as I said, it is of very great importance that I get these opinions, because if they should be in favor of the soundness of my argument, my claim upon the public would be greatly enhanced. And the mouths of cavillers, who might otherwise be disposed to guesting my claims, would be stopped. The newspapers would also take much stronger ground in my favor than they otherwise would.

When I shall have got these opinions, I propose to publish my pamphlet, including my argument -then to give the pamphlet to the newspapers - then to collect the comments of the newspapers, in brief, print them in a tract to be attached to the pamphlet -then present a copy of the pamphlet to the merchants generally in the cities, of whom contributions will be asked. They will then have the whole evidence before them. They can act on the opinions expressed by the newspapers, or can take time and examine the whole evidence for themselves as they see fit.

To get the necessary legal opinions, and then to publish my pamphlet, and meet this necessary incidental expenses, would undoubtedly cost \$200. I have no friends here, of whom I can borrow this money. Some have contributed, as I have said, small sums, as they were able, (amounting to near \$100). Others have told me, with apparent sincerity, that they would help me, if they had the means. It is only in this extremity, and with a great reluctance to do anything that should look like presuming too much upon your kindness, that I ask you to look at the pamphlets, and judge whether I have saved you so much postage, that you can afford to lend mt \$200, and trust to the success of the contribution from the public for the means to pay you?

If the contributions should succeed, I shall probably be able to replace the money in three or four months.

There is probably very much doubt whether I shall obtain a large or only a small contribution, but it seems to me there can be

but little doubt that I shall obtain enough to enable me to replace the \$200. Nearly all, with whom I have conversed, think the thing will succeed. Of all of this, however, you will judge for yourself- and I do not wish you to lend this money, unless you can do it without having any hard thoughts of me in case of failure.

And now I wish to justify myself in you eyes, for making this request- for I apprehend you will think, at first blush, that this request needs some special justification.

In the first place, there, I have no forgotten that you have repeatedly aided me already. But I have supposed that this aid was in reality intended, not as a favor to me personally, (for I never asked or desired it on such grounds), but to promote the objects to which I devoted it, along with my own services. So that, although I was even more grateful for this aid to the objects in which I was so deeply interested, than I should have been for a like personal obligation and indebtedness in the one case, that I should have done in the other. And you have been kind enough to say that you do not wish me to feel any such indebtedness - and that I have given you in return more than your money's worth. I know you would not say so, unless you felt so. I therefore accept it as truth.

I mention this not by any means to depreciate your kindness- (for I really think I felt it more than if the favor had been intended for me alone) - but only to justify myself for not regarding it as a bar to my making another request, that stands on entirely different grounds.

The favor I now ask, I ask solely on the ground, on which I asked the merchants of Boston (before mentioned) to contribute - that is, in consideration of the postage I have saved to you, and the service I have rendered to the public, in this particular matter. If you would feel obliged to refuse another, who had rendered yourself and the public the same service, I would have you refuse me. I apply to you, because I suppose your postage is very large, and that you have therefore made large savings from the reduction; because also my applications to strangers have failed; because I know you will at least read my pamphlet, and consider the matter, which strangers will not do; because I think you will be please to accommodate me if you can; and finally, because you are



the only person to whom I can apply with propriety, and with any prospect of success.

Such is my apology. But whether it be sufficient or not, I should not have ventured the request, had I not been driven to it by necessity. For nearly five years I have subsisted (not lived) on about \$200 a year; working to the best of my ability, in the hope that the world would sometime give me bread in exchange for my labor. This they have neglected to do, and I am every day getting more and more destitute. I think I have not earned more than a hundred dollars in the last year. I am receiving nothing from my books already published, and can find no publisher for those that I wish to publish. I have neither strength nor skill sufficient to enable me to obtain even a comfortable subsistence by manual labor having never learned a trade.

I do not mean to say that I could not obtain a living, if I would do as others do- for I could then do it any day- I have just had an offer, from the new collector at Boston, of a situation in the custom house - and I have also been told, in effect, almost times without number, that if I would practice such law as others do, such law as will avail with the courts, such law in short, as clients are willing to pay for, I could have as much business as I want. But I should consider it less dishonest to go upon the highway, and take my living by force, than to get it in either of these ways- for I should not then, in addition to the robbery, practice the fraud of pretending to do it lawfully.

Having nothing to rely upon for the future, I have the imminent prospect before me of extreme poverty, and even suffering, and of a comparatively inactive and useless life, where I feel that I am competent and willing to be of some service to the world.

It is but poor consolation to me, under these circumstances, to feel that my resources, my rightful resources as I think, (I mean from the sale of my books), have been cut off by abolitionists themselves- by men who profess to have been convinced of the truth of my arguments, but who have decided to refrain from the propagation of that truth as impolitic for their purposes. You have expressed your abhorrence of this conduct in as strong terms as I should wish to do it myself. But I must here add that I think I have some cause

of complaint against Mr. Gerrit Smith himself. First, that, in his letter to Chase, in 1847, he should concede, in the face of my argument, that the importation clause refers to slaves - this virtually surrendering as most men would think the whole argument against slavery. I think he was bound to have examined my argument with more care, before this impliedly condemning it as unsound, in the face of the opinions of nearly all who had ever read it. Astonished, as I was, by this concession, from one who claimed to be a special champion of the doctrine that slavery was unconstitutional, I consoled myself with the reflection that it was probably made before you had read my second part. And when, after reading my second part you told me you did not see how any lawyer, whatever his ingenuity, could answer it, I trusted I should hear of no more concessions to slavery from that source. What then was my chagrin at reading, the next summer, the address of the Utica (or was it Buffalo) Convention, from the pen of the same Mr. Smith, virtually repudiating by refusing to assert, the doctrine of the very argument which he had before told me was unanswerable, and then resting the whole question of the unconstitutionality of slavery upon one of the amendments- a ground that is certainly untenable?

It is undoubtedly the duty of Mr. Smith, as of other men, to put forth, in his individual capacity, any arguments, which, on due deliberation, he thinks sound and useful. But has he a right to put into the mouths of a convention, who claim, before the country, to be the special defendants of the doctrine that slavery is unconstitutional, an address which ignores nearly or quite all the arguments by which they had been convinced of that doctrine, and then places the doctrine on new grounds, and on a new argument, which they (the convention) had never examined, and of whose truth they could judge nothing from the mere reading in the Convention/. Has he a right thus to use the authority and weight of a convention, to throw out to the world, as an exposition of the creed of a party, his merely private opinions, of the truths of which neither the party, nor the convention, have had any proper opportunity to judge: that the convention should have thus, at the instigation of a single one of its members, thrown overboard all the arguments which they had previously examined, and declared to be sound, and have committed themselves to new ones that they had no opportunity to judge of, is unaccountable to me, except on the supposition that there is a body of men in New York, who, for some reason or another, allow Mr. Smith to proclaim to the world, in their name, whatever it may please him to say.

And now I ask you, whether, if it should turn out, as I think is assuredly will, that your new arguments are unsound, will not such proceedings tend very strongly to bring into contempt, or at

least into disrepute, both the doctrines, and the advocates, of the unconstitutionality of slavery?

But I allude to these things now, not altogether, not principally, for the purpose of complaint, but to show in what manner the sale of my books, (which yourself and nearly all others, who have read them, declare to be unanswerable), has been destroyed, and my resources for completing the argument cut off- and especially to show some of the means by which I have been reduced to such straits as to be compelled to ask of you the favor I now do ask, to enable me to secure, if I may, some compensation for my services in reducing the postage.

You will pardon me for saying that, if I have the money, it is of great importance that I have it immediately, for this reason. Mr. Abbott Lawrence is going out of the country. I wish to have the matter brought out before he goes, because I think he will head the subscription with a larger sum than any other man, and that his example will also have more influence among the merchants to induce them to contribute.

Very Respectfully,

Your obt. Servant,

Lysander Spooner

P.S. Please direct to Worcester.

Copies of Cerificates

"I have been requested to express an opinion respecting a pamphlet entitled, "The Unconstitutionality of the Laws of Congress Prohibiting Private Mails; By Lysander Spooner", published in 1844.

Having had occasion to examine this pamphlet carefully, soon after it appeared, I am happy to say that I was impressed with the ability and research displayed in it. The argument it presented were to a great extent original, and the author's leading and important position, that all laws prohibiting Private mails were unconstitutional, was maintained with a force ad cogency, calculated, under the obvious limitations applicable to it, to convince every unbiased judgment.

Boston 9 Feb, 1849

Rufus Choate".

"Andover May 2 -1849

Gentlemen,

I have received your favor of April 27 requesting my opinion on the constitutionality of the laws against private mails.

My attention has never been specially called to that question, and it is out of my power, at present, to command the time necessary for a thorough examination of it. I can only say, that having read over Mr. Spooner's argument, I have been deeply impressed with its cogency, and the research it displays; and should think it a very difficult work to refute it. In effecting a reduction of the postage, which seems justly attributable to his exertions, he has performed a service deserving not only the gratitude of the community, but a remuneration of the expense it must have cost him.

Respectfully, your Obt Servant,

S. Greenleaf.

To M\_\_\_rs Jus. W. Wetherell, Jus. C Wigmore, \_\_\_ H Blood."

"New York May 18, 1849

My dear Mr. Howe,

I return the pamphlet containing the argument of Mr. Lysander Spooner on the unconstitutionality of the laws prohibiting private mails.

That he has established this point, I am not prepared to say, while I appreciate the force of his reasoning.

One thing is certainly evidence, that Mr. Spooner has displayed talent and energy in obtaining a reduction of the charges of postage, and deserves the gratitude of all of us for the obtaining of a great public benefit. I am faithfully yours,

W. Kent."

"Auburn June 2, 1849

Gentlemen,

My engagements leave me no leisure to examine the interesting question discussed by Mr. Spooner in the pamphlet you have submitted to me. It seems clear enough however that his opinion of the unconstitutionality of the laws prohibiting private mails was adopted by him in good faith and upon at least plausible grounds, while it has been discussed with great ability and fairness - has much as the agitation of the question, very proper under such circumstances, contribute to the reformation of our Post system and the establishment of cheap postage, I am quite satisfied that Mr. Spooner deserves will of the country and of the age.

I am with great respect,

Your humble servant

William H. Seward.

Messrs John W. Wetherell, Oliver H Blood, and Joh C Wyman."

"Having examined the Pamphlet entitled "Who Caused the Reduction of Postage in 1845?", and the argument of Lysander Spooner, published in 1844, on "The Unconstitutionality of the Laws of Congress

Prohibiting Private Mails," it seems to us that they afford abundant evidence that Mr. Spooner's efforts did more than any other cause to compel the reduction of postage in 1845.

As Mr. Spooner incurred debts, while he was engaged in his contest with the government, that he has never been able to repay, we think he has claims as a public benefactor, which we trust will be recognized by many of those who now enjoy the benefits of cheap postage.

Boston March 7, 1849      S.E. Sewall

James M. Miltion

George Minot."

"Boston March 6, 1849

From facts that have come to my knowledge, I am satisfied that the private mails established by Mr. Lysander Spooner, and the able argument he published in 1844, on the Unconstitutionality of the Laws of Congress Prohibiting Private Mails, produced a great effect upon Congress and the Post office Department, and were among the principal causes, which brought about the reduction of postage made in 1845. Armasa Walker."

On page 10 of the large pamphlet, will be found the opinions expressed of the argument by several of the New York papers in 1844.

Boston.      Sept. 29. 1849.

Mr. Gerrit Smith,

Dear Sir,

Knowing the interest you have taken in behalf of Mr. Spooner's Writings, and the assistance which you have rendered to him, I take the liberty of addressing you.

Soon after the meeting of the Liberty Convention in your State, which passed a resolution to supply the lawyers, each with a copy of Spooners' Argument on the Unconstitutionality of Slavery, I received a line from Mr. Wm. P. Green in relation to sending him 100 copies toward supplying the demand, which might be created in consequence of said resolution. I replied to him by making the inquiry, how many would be likely to be wanted, and whether they would not be required to be printed on better paper, as I had but a few copies of the old edition on hand.

Mr. Green has never answered my letter and I conclude he has not received it. If it would not be troubling you too much, you would do me a great favor, by informing me at your earliest convenience, what kind of an edition, and about how many copies of Mr. Spooners' work would be wanted for the State.

I feel interested, peculiarly, in the circulation of said work, both in a pecuniary, and a moral point of view, it being remarkably well to enlighten the people on an eminently important subject.

From some cause or another, the work has never been circulated a tenth part so extensively as it should have been, and shall I hope that the late movement in the Convention will be duly carried into effect.

Yours Respectfully,

Bela Marsh

No. 25 Cornhil

(Handwriting change, Smith scrawl on bottom-)

Copy. Peterboro, Oct 9 1849

Mr. Bela Marsh,

D Sir, I have your letter. Mr. Spooner's Argument on the Unconstitutionality of Am. Slavery is admirable & far surpasses every other on that subject. I had intended to take an active part in supplying the Lawyers of this State with it, But recent occurrences have disinclined me to carry out this intention. The Lawyers in my own County will be supplied with it - for, previous to those occurrences, I had agreed with Mr. Wm. P. Green to furnish me the copies for this purpose. I wish that the lawyers of every County might be supplied with it. Respectfully Yours, Gerrit Smith."