

Worcester Sept 14, 1849

Dear Bradburn,

The following is a copy of the opinion I sent to Smith—

Yours truly,

L. Spooner

"In regard to the fourth and 5th 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, by brute force. They pretend to do this by virtue of what they call their right of property—that is, their right of person dominion—for the right of property is scarcely[?] 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, etc., 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 habeas 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 (the 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 4th amendment as to the 5th. 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 etc, etc. 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—and why? Because this amendment applies to the government, and not to private persons. So if a slaveholder breaks into a negro's cabin, and seizes and searches him, his wife, and children, and everything in the house, we cannot say that the act was forbidden by this provision, 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 Morn's was accused (justly or unjustly) of doing in the case of the Glentworth papers, this prohibition would apply—(supposing it to apply to the state governments).

If you will just look at the whole of the 4th and 5th 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 then national. I think, however, they apply only to the national—with the exception of the 2^d amendment, (against infringing 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 the others do not."