

KENTUCKY AND SLAVERY: THE CONSTITUTIONAL CONVENTION OF 1792

by

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## ABSTRACT

### KENTUCKY AND SLAVERY: THE CONSTITUTIONAL CONVENTION OF 1792

Slavery, protected by the United States constitution, expanded as new territories opened up. Heated debate over abolition accompanied slavery's expansion. In Kentucky's constitutional convention of 1792, antislavery sentiments for abolition were countered by an argument for protecting slavery. This thesis analyzes the proslavery argument of lawyer George Nicholas who opposed the antislavery argument of minister David Rice. Analyzing that debate, this thesis argues that an entrenched, economic and legal, proslavery argument overcame a humane, moral, antislavery argument. Including an analysis of the consequences for African Americans, the thesis concludes how and why a growing minority of slaveholders was able to perpetuate slavery in the second constitutional convention of 1799. Consequently, Kentucky presents an important case study of how slavery took hold and expanded in a state where the majority did not own slaves.

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Halifax, Nova Scotia, 2010

## CHAPTER ONE: INTRODUCTION

Slavery was a unique paradox for a people who had just fought a war for independence, based on the aspiration that individuals should be free to choose their own life styles, pursue their own versions of happiness, and enjoy their own political representation. Yet in the midst of the new United States of America stood a subjugated people, considered as property, upon whose labor others acquired the means to pursue happiness. Slavery was a contradiction for the new “free” country because it was supported by restrictive laws, custom and prejudice. However, it was a time, as Ira Berlin argued, when the promise of freedom for all might have led to the possible transformation of slavery.<sup>1</sup> That time had been, unfortunately, fleeting. Transformation took an inward turn toward a domestication of the slave trade which, Adam Rothman argued, led to a substantial expansion of slavery throughout the southwest and a concerted defense of this “peculiar institution.”<sup>2</sup>

The “founding fathers” of the nation had grappled with the expansion of slavery in the 1774 Continental Congress and the 1787 Constitutional Convention. What eventuated, according to Lacy K. Ford was a continuing passionate argument between North and South over owning slaves but disowning slavery.<sup>3</sup> Paul Finkleman traced the

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<sup>1</sup> Ira Berlin, “Coming to Terms with Slavery in Twenty-First-Century America” in *Slavery and Public History: The Tough Stuff of American Memory*, eds. James Oliver Horton and Lois E. Horton. (New York: The New Press, 2006), 2-3.

<sup>2</sup> Adam Rothman, *Slave Country: American Expansion and the Origins of the Deep South* (Cambridge: Harvard University Press, 2005), ix-xi, 18-21; see also Adam Rothman, “The Domestication of the Slave Trade in the United States,” in Walter Johnson, ed. *The Chattel Principle: Internal Slave Trades in the Americas* (New Haven: Yale University Press, 2004), 32-40. For “peculiar institution,” see Kenneth Stampp, *The Peculiar Institution: Slavery in the Antebellum South* (New York: Knopf, 1956).

<sup>3</sup> Lacy K. Ford, *Deliver Us from Evil: The Slavery Question in the Old South* (New York: Oxford University Press, 2009), 19.



days, leading to weeks, of rancorous argument that accompanied every decision over a number of issues affecting every state in the Union: restricting the slave trade, compensating owners for slave property carried away by the British, determining the value of slave property for its productive capacity, determining proportional representation of the whole population—including slaves—in the House of Representatives and Senate, putting down domestic (slave) insurrections, and returning fugitive slaves.<sup>4</sup> These were the slavery issues that had plagued the North and South and would continue, in one form or another, to do so until the Civil War.

Historians generally agree that a number of national leaders, such as Jefferson and Washington, had wished slavery would go away, but proposed no plans for doing away with slavery except to limit or stop the transatlantic slave trade.<sup>5</sup> Matthew Mason concluded that arguments over slavery entered every aspect of American politics from the Revolution to the Civil War, resulting in two truths: there was never a time when slavery went unchallenged and chattel slavery had become central to American life.<sup>6</sup> For instance, according to Finkelman, pressures from the Southern members of the Constitutional Convention forced a compromise on unity or prohibiting slavery. Unity was chosen after slavery was protected.<sup>7</sup> Immediately, domestic slavery was free to continue its controversial expansion from first states to new states. The domestic slave trade did not rely upon importations from the Caribbean or Africa but upon the intrastate

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<sup>4</sup> Paul Finkelman, *Slavery and the Founders: Race and Liberty in the Age of Jefferson* (Armonk, NY: M. E. Sharp, Inc., 2001), 1-33; see also Don E. Fehrenbacher, *The Slaveholding Republic: An Account of the United States Government's Relations to Slavery* (New York: Oxford University Press, 2001), 15-47.

<sup>5</sup> Rothman, *Slave Country*, 2-4; Finkelman, *Slavery and the Founders*, 105-106; Matthew Mason, *Slavery and Politics in the Early American Republic* (Chapel Hill: The University of North Carolina Press, 2006), 19.

<sup>6</sup> *Ibid.*, 5.

<sup>7</sup> Finkelman, *op. cit.*

and interstate commerce in slaves. According to Steven Deyle, the Upper South of Virginia and Maryland discovered that they had a valuable surplus they were willing to trade for two reasons: to disperse the concentration away from the plantations of the piedmont and to realize a profit by having a commodity much in demand.<sup>8</sup>

Historians have reported the discussions over slavery and the slave trade as “squabbles,” “anguished arguments,” “bitter struggles,” “spirited exchanges full of “passion and bitterness.”<sup>9</sup> Passionate controversy trickled down to the state ratifying conventions. Even Southerners argued among themselves. Virginia, for instance, pitted anti-federalists against federalists who argued about the future power of the federal government over state interests. Though the content of the federal constitution protected slavery, too much power in federal hands might enable the North to abolish or limit slavery. Patrick Henry argued that congress might, by means of its powers of taxation and providing for the common defense, find a way to abolish slavery.<sup>10</sup> George Nicholas, a young lawyer in the Virginia Assembly, learned much from the experience of debating Patrick Henry over the need for a central government and helped sway just enough delegates to accept that this constitution was sufficiently proslavery.<sup>11</sup>

Mason argued that, through frequent debate, Southerners hardened their defenses of slavery as it came under “serious, sustained scrutiny.”<sup>12</sup> He traced the painful and slow progress of an abolition movement from the Quakers before the Revolution to the

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<sup>8</sup> Steven Deyle, *Carry Me Back: The Domestic Slave Trade in American Life* (New York: Oxford University, 2005), 22-23; see also Steven Deyle, “The Domestic Slave Trade in America: The Lifeblood of the Southern Slave System,” in Johnson, *The Chattel Principle*, 91-116.

<sup>9</sup> Respectively, Fehrenbacher, *Slaveholding Republic*, 30; Finkelman, *Slavery and the Founders*, 8 and 19; Mason, *Slavery and Politics*, 2-3.

<sup>10</sup> Fehrenbacher, *Slaveholding Republic*, 37.

<sup>11</sup> Lowell Hayes Harrison, *Kentucky's Road to Statehood* (Lexington: The State University Press of Kentucky, 1992), 74.

<sup>12</sup> Mason, *Slavery and Politics*, 9-10.

antislavery sentiments of some evangelical Protestants. They argued that holding men in slavery was immoral and that it was unnatural to consider human beings as property and deny them their freedom. Finkelman related that some men, raised on Lockean concepts of “life, liberty, and property,” countered the abolitionists by asking if it were fair to deprive one man of his property in order to give another his liberty.<sup>13</sup> Parish concluded that these Southern slaveholders were afraid of “economic ruin, social chaos, and racial anarchy” if slavery were abolished.<sup>14</sup> The persons they were afraid of, the African Americans themselves, enslaved and free, were beginning to question how long they would have to wait for their freedom, and, as Gary B. Nash argued, were beginning to agitate for slavery’s demise.<sup>15</sup>

Yet slavery continued to expand. How the federal government would regulate slavery in the future came to a test with the Northwest Ordinance Act of 1787, its re-adoption in 1790, and the passing of the Southwest Ordinance Act in 1790. These acts would regulate expansion into territories which would become new states. According to Hammond, since slavery had already been established in the territories, even in the Northwest, there was serious resistance to its abolition. Because the federal government was limited in its ability to enforce its legal authority over the West, frequent and intense political debates, like abolishing slavery or permitting it, became local decisions, ultimately written into new state constitutions.<sup>16</sup> Kentucky would become one of the first of the new state constitutions where the expansion of slavery would become a local

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<sup>13</sup> Finkelman, *Slavery and the Founders*, 38.

<sup>14</sup> Peter J. Parish, *Slavery: History and Historians* (New York: Harper & Row, 1989), 23.

<sup>15</sup> Gary B. Nash, *The Forgotten Fifth: African Americans in the Age of Revolution* (Cambridge: Harvard University Press, 2006).

<sup>16</sup> John Craig Hammond, *Slavery, Freedom, and Expansion in the Early American West* (Charlottesville: University of Virginia Press, 2007), 6.

decision. Consequently, Kentucky presents an important case study of how slavery took hold and expanded in a state where the majority did not own slaves.

#### **THE IMPORTANCE OF KENTUCKY**

Kentucky is an interesting study, according to Kentucky historian Thomas P. Abernethy, because it was the first frontier after 1776 with the opportunity to shape its own political institutions.<sup>17</sup> Joan Wells Coward concluded that Kentucky had been “something of a testing” ground for the debate of new ideas, assumptions, institutions.<sup>18</sup> Indeed, there were many national and local debates at this time over natural rights and good government issues—in Kentucky it was also suffrage and property redistribution, for instance—but, because of the labor needs of this new state, slavery featured prominently.

As can be seen in Figure 1, slavery expanded first to Kentucky. Kentucky was a District of Virginia that struggled through ten conventions to become a separate state. During these seven years (1785-1792), Indian warfare decreased, settlements became safer, and the white population of Kentucky exploded. Speculators arrived to take advantage of open spaces and cheap land, survey it improperly, and resell it without clear title, often to the disadvantage or ruin of poor farmers. Former members of Virginia militias had been awarded land in lieu of payment for their services. They led the immigration westward into new, fertile land. Accustomed to slavery, some brought slaves with them, particularly the planters. Between 1784 and 1790 the number of enslaved people grew from approximately 4,000 to 12,430, or 16.2% of the population. By 1790

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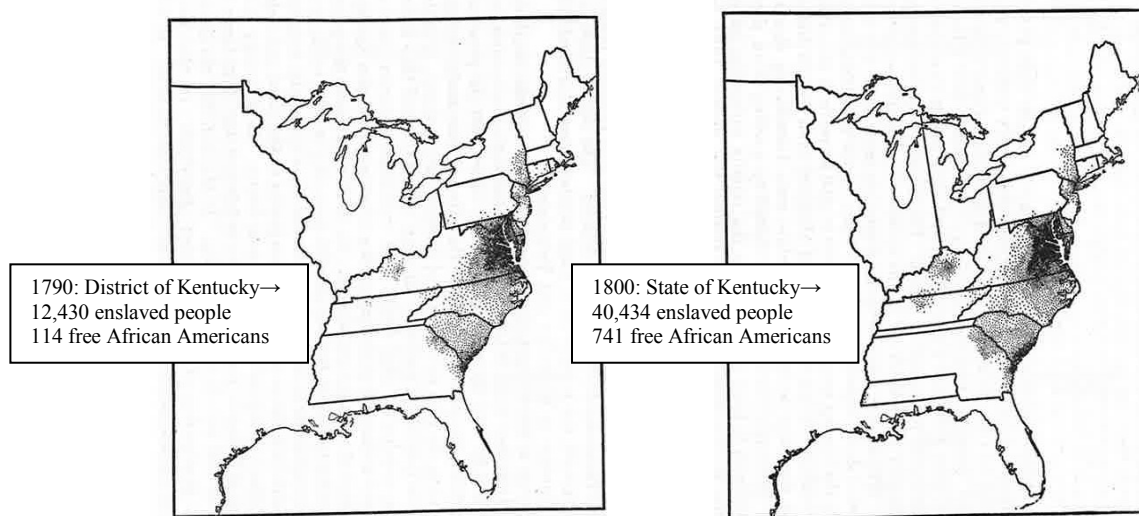
<sup>17</sup> T. P. Abernethy, *Three Virginia Frontiers* (Gloucester, MA: Peter Smith, 1962), 68-69.

<sup>18</sup> Joan Wells Coward, *Kentucky in the New Republic: The Process of Constitution Making* (Lexington: University Press of Kentucky, 1979) 3.

approximately 17% of Kentuckians held slaves in bondage. By 1800 the enslaved grew 225% to 40,343.

### Figure 1: Increase in Number of Slaves from 1790 to 1800

These are “geographic expressions of slave population in the Southern States, 1790-1800” prepared in the Bureau of Agricultural Economics, United States Department of Agriculture. The tiny dots on the left graph represent the number of slaves in Virginia’s (western) District of Kentucky in 1790. The right graph indicates the expansion of slavery into the state of Kentucky in 1800.<sup>19</sup>



Many immigrants came as yeoman or tenant farmers from the north, the middle – Atlantic states and Europe; relying only on the labor of themselves and their families, they came to carve out farms which would provide a competency. Small farmers and landless people resented planters, who relied on slave labor, because planters and speculators, with the help of lawyers and judges, had acquired huge tracts of uncultivated land and produced crops or bred horses much more profitably. In 1790 approximately

<sup>19</sup> See Lewis Cecil Gray, *History of Agriculture in the Southern United States to 1860* (Washington: Carnegie Institution, 1933), 652. These graphs are also cited in Robert William Fogel and Stanley L. Engerman, *Time on the Cross: The Economics of American Negro Slavery* (Boston: Little, Brown and Company, 1974), 45; and Deyle, *Carry Me Back*, 43. In Gray’s text (652-655) there are eight graphs from 1790 through 1860 which visibly demonstrate the massive expansion of slavery throughout the upper and lower South.

83% of Kentuckians did not own slaves. As for land ownership in 1800, one-tenth owned one-third of the available acreage; one-third owned less than 200 acres; and half owned none at all.<sup>20</sup> Consequently, two antagonistic groups or factions, loosely affiliated ideologically into political “parties,” faced each other in a constitutional convention over issues of land, suffrage, governance, and the expansion of slavery. Mixed into this confrontation were the growing antislavery sentiments of the religious community.

Presbyterian Minister David Rice was among the first to express heartfelt antislavery sentiments to the constitutional convention. Hoping to eliminate the “national crime” of slavery from the proposed State of Kentucky, Rice argued that Kentucky had the power to stop slavery. Because the tenth Kentucky convention, charged with writing the 1792 constitution, had the opportunity to initiate a new order, he did not want Kentuckians to perpetuate the vice of holding slaves as their mothering state Virginia did. With the ideals of the American Revolution still resonating in their hearts, David Rice hoped that Kentuckians could make a difference when it came to slavery. Historian Asa Earl Martin argued that the some of the leaders who were influential at the tenth convention “may have felt that they were standing at the parting of the ways” when it came to perpetuating slave labor in Kentucky.<sup>21</sup>

Fellow Virginian-born Kentuckian, planter and lawyer George Nicholas countered Rice’s argument at the convention. Recognized as the most influential person

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<sup>20</sup> Stephen Aron, *How the West was Lost: The Transformation of Kentucky from Daniel Boone to Henry Clay* (Baltimore: the Johns Hopkins University Press, 1996), 84; see also Joan Wells Coward, *Kentucky in the New Republic: The Process of Constitution Making* (Lexington: University Press of Kentucky, 1979), 55.

<sup>21</sup> Asa Earl Martin, *The Anti-Slavery Movement in Kentucky Prior to 1850* (Louisville, KY: The Standard Printing Company, 1918), 10. See also John P. Kaminski, *A Necessary Evil: Slavery and the Debate over the Constitution* (Madison, WI: Madison House, 1995), 243: “The American Revolutionary era was a time when slavery might have been abolished peacefully without dismembering the union.”

of the convention, Nicholas argued that slaves had been considered property in law and custom and that they could not be emancipated now or in the future without compensation for their owners. After his argument was heard, antislavery and proslavery discussions before and during the convention eventually came to a decision point. Slavery's prohibition hinged on a vote to expunge a certain clause from the proposed constitution. Though there are no extant notes or minutes of the debate of that week, on April 18<sup>th</sup>, the forty-two seated members of the tenth convention deliberated the issue of slavery and were challenged to register their yeas and nays in the only recorded vote of the convention.<sup>22</sup> After this vote and the adoption of the constitution, George Nicholas, not entirely successful but relieved, wrote in 1792 to James Madison that "we have formed our government which I believe you will think is not the worst in the Union."<sup>23</sup>

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This thesis argues that a proslavery or antislavery government in Kentucky was a local decision though it was influenced by the wider national debate over slavery. This thesis essentially argues that, in Kentucky, an entrenched, economic and legal, proslavery argument overcame a humane, moral, antislavery argument. The proslavery succeeded over the antislavery argument of David Rice because of the skills of its proponent George Nicholas. This thesis argues that because of George Nicholas and the concentrated focus of the support behind his argument, a minority of slaveholders was able to prevail over the will of a majority who seemed to favor an antislavery Kentucky.

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<sup>22</sup> Geo. L. Willis, "History of Kentucky Constitutions and Constitutional Conventions." *Register of the Kentucky Historical Society* 28.85 (October 1930), 313; Harrison, *Kentucky's Road*, 110.

<sup>23</sup> Nicholas to Madison, May 2, 1792, *The Madison Papers*, XIV, quoted by Patricia Watlington, *The Partisan Spirit: Kentucky Politics, 1779-1792* (New York: Atheneum, 1972), 222.

This thesis analyzes the arguments essential to the debate and the voting during the constitutional convention. Chapter One introduces the stakeholders—frontiersmen, planters, politicians, and African Americans<sup>24</sup>—and some of their motivations. Chapter Two synthesizes the national and local antislavery arguments leading to and supporting David Rice’s speech to expunge the proposed slavery clause from the constitution. Chapter Three presents George Nicholas’s speeches and activities in answer to David Rice and national and local proslavery ideas leading to 1792. Chapter Four records and analyzes the vote by probing the motivations of the various members of the convention to determine who apparently failed and who succeeded. Finally, including an analysis of the consequences for the initial stakeholders in the new State of Kentucky, Chapter Five concludes how and why a growing minority of slaveholders was able to perpetuate slavery in the second constitutional convention of 1799.

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In order to understand how slavery prevailed in Kentucky, one must analyze two primary sources of the slavery argument. In *Slavery Inconsistent with Justice and Good Policy; Provided by a Speech Delivered in the Convention, Held at Danville, Kentucky* David Rice presented a comprehensive analysis of slavery at that time.<sup>25</sup> Chapter Two discusses that argument in detail along with an analysis in Chapter Four of the sometimes sarcastic tone of the argument which may have led to its rejection. The second essential source is George Nicholas’s speech from notes. His notes on “Slaves,” and other issues in

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<sup>24</sup> The term “African American” will be used currently in the same sense and label as that by the NAACP. Versions of the word “Negro” may appear with or without quotation marks in the direct references and quotations of late eighteenth century writers.

<sup>25</sup> David Rice, *Slavery Inconsistent with Justice and Good Policy; Provided by a Speech Delivered in the Convention, Held at Danville, Kentucky* (Philadelphia, 1792). Reprinted in London: M. Gurney, 1793. American Libraries Internet Archive. 15 August 2010 <<http://www.archive.gov>>.



the constitution presented his primary argument that slaveholders had to be compensated if their slaves were emancipated. His extensive notes also presented a comprehensive analysis of emancipation and its consequences from a proslavery position.<sup>26</sup>

Other primary sources presented more background to the pressing issue of slavery. Daniel Drake wrote about his life and his parents in *Pioneer Life in Kentucky, 1785-1800*.<sup>27</sup> Daniel Trabue's *Narrative* described motivations for going to Kentucky and taking slaves with him.<sup>28</sup> In 1792 Harry Toulmin wrote a letter to Englishmen enticing them to settle in Kentucky: *A Description of Kentucky, in North America*...<sup>29</sup> As small farmers, all three could not escape the issue of slavery in securing a homestead. In addition, the various antislavery and proslavery letters in the issues of the *Kentucky Gazette* from 1788-1798 revealed the importance of the slavery argument. The *Journal of the First Constitutional Convention of Kentucky Held at Danville, Kentucky, April 2 to 19, 1791* presented crucial information about the two weeks of the convention.<sup>30</sup> In his *The History of Kentucky*, based on the testimony of "living witnesses," Humphrey Marshall made various comments about the members of the convention and the slave code of 1798 as the new constitution affected African Americans.<sup>31</sup>

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<sup>26</sup> George Nicholas, "Slaves," University of Chicago Reuben Durrett Collection, box 1, folder 28, n.d.

<sup>27</sup> Daniel Drake, *Pioneer Life in Kentucky, 1785-1800* (1847), ed. Emmet Field Horine (New York: Henry Schuman, 1948).

<sup>28</sup> Daniel Trabue, *Westward into Kentucky: The Narrative of Daniel Trabue*, ed. Chester Raymond Young (Lexington: University of Kentucky Press, 1981).

<sup>29</sup> Harry Toulmin, *A Description of Kentucky, in North America: to which are prefixed miscellaneous observations respecting the United States* (London, 1792) *Eighteenth Century Collections Online*, 22 Sept. 2010 <<http://galenet.galegroup.com>>.

<sup>30</sup> *Journal of the First Constitutional Convention of Kentucky Held at Danville, Kentucky, April 2 to 19, 1791*, ed. Samuel M. Wilson (Lexington: State Bar Association of Kentucky, 1942), Hathi Trust Digital Library, 23 Aug. 2010 <<http://babel.hathitrust.org>>.

<sup>31</sup> Humphrey Marshall, *The History of Kentucky. Including an Account of the Discovery—Settlement—Political and Military Events—and Present State of the Country. In Two Volumes* (Frankfort: Printed by Henry Gore, 1812); see Bibliography.

However, there are no voices of African Americans in Kentucky on the issue of slavery during 1792-1799. Some of the white pioneers kept journals and diaries in which they recorded incidents involving slaves or told stories of heroic behavior or cruel treatment of slaves. Daniel Trabue and Daniel Drake were two such narrators: the former a slaveholder, the latter not, yet both were sympathetic to the plight of slaves.<sup>32</sup> Unfortunately, during this period the voices of African Americans themselves, as enslaved or free, had not been recorded by themselves or the whites around them or have not survived for contemporary study. Their only recorded response to slavery, found in the wanted ads of the *Kentucky Gazette*, was to cross the 700-mile river bordering Kentucky to freedom.<sup>33</sup>

Secondary sources necessarily supported five areas of research: a general background of early pioneering and settlement of Kentucky; commentary and history of the constitution itself; the Virginia background to slavery in Kentucky; the national debate on slavery and federal constitutional compromises; and the plight of the American American as enslaved and free in Kentucky. Of these, the second group dealt with the constitution. In a two-part essay in *The Filson Club History Quarterly* in 1951, Pratt Byrd summarized two major problems on the Kentucky frontier in 1792 as slavery and land holding with planters having a vested interest in perpetuating slavery.<sup>34</sup> Additionally, in

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<sup>32</sup> Daniel Trabue, *Westward into Kentucky*. He commented on the slaves around him in approximately a quarter of the pages of his journal. In September, 1785, after twenty-one days coming down the Ohio River and low on provisions, the slaves were inevitably fed last and given only wild turkey meat. One commented: "That will Do very well, master. If we have plenty of Turkeys we will never Die; but if we have bread and bacon too, we would live a heap longer," 136. Daniel Drake's comments will be found later in this chapter and Chapter Five.

<sup>33</sup> Marion B. Lucas, *A History of Blacks in Kentucky from Slavery to Segregation, 1760-1891* (Frankfort: The Kentucky Historical Society, 2003), 61-62.

<sup>34</sup> Pratt Byrd, "The Kentucky Frontier in 1792 (Part I: Slavery and Land Holding)," *Filson Club History Quarterly* 25.3 (July 1951), I: 181-202; Pratt Byrd, "The Kentucky Frontier

1992 Lowell Hayes Harrison published a comprehensive history titled *Kentucky's Road to Statehood*.<sup>35</sup> Harrison credited the party structure developed in 1972 by Patricia Watlington in *The Partisan Spirit: Kentucky Politics, 1779-1792*, referred to later in this chapter and Chapter Four.<sup>36</sup> Her work, in turn, influenced one of her students, Joan Wells Coward to publish her research in 1979 which became *Kentucky in the New Republic: The Process of Constitution Making*.<sup>37</sup> Of the secondary sources, Byrd, Harrison, Watlington, and Coward have provided the closest review of the events of all the issues of the constitutional convention. Therefore, what results is a focused analysis of why the issue of slavery, though considered in only one article of twelve in the 1792 constitution, was a crucial one in determining the reasons for Kentucky's position in the national dilemma of slaveholding in the United States.

#### **PIONEERS, YEOMEN FARMERS, PLANTERS AND THEIR SLAVES**

Historian Ellen Eslinger explained how, before the Revolutionary War, hunters, trappers, traders, and land company surveyors discovered immense, very fertile tracts of land west of the Appalachians within the extended boundary of the royal colony of Virginia. These lands were not occupied by native peoples but used, rather, as hunting grounds for food and fur.<sup>38</sup> The men who explored this area quickly concluded that they

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in 1792 (Part II: Kentucky's First Constitution)," *Filson Club History Quarterly* 25.4 (October 1951): 286-293.

<sup>35</sup> Lowell Hayes Harrison, *Kentucky's Road to Statehood* (Lexington: The State University Press of Kentucky, 1992).

<sup>36</sup> Patricia Watlington, *The Partisan Spirit: Kentucky Politics, 1779-1792* (New York: Atheneum, 1972).

<sup>37</sup> Joan Wells Coward, *Kentucky in the New Republic: The Process of Constitution Making* (Lexington: University Press of Kentucky, 1979).

<sup>38</sup> "Indians" was a term used to identify mostly Shawnees in the north and central "blue grass" part of the state with Cherokees in the southern and Iroquois hunting the northern part; all

should stake out as much land as they could for homesteads and speculation before anyone else did. Consequently, according to Eslinger, “the rush to claim a personal piece of North America’s best real estate had begun.”<sup>39</sup>

These pioneers applied to Virginia for title to this promising soil, but faraway Virginia mismanaged the conflicting claims of farmers and land speculators. Early surveyors were not as skilled as the settlers needed them to be, resulting in many overlapping boundary problems and debilitating court cases.<sup>40</sup> Additionally, according to Aron, Kentucky was plagued by an early history of land speculation as politically connected gentlemen grabbed huge chunks of the prime Bluegrass of central Kentucky, marked up property values, created confrontational tension in the backcountry, and frustrated homesteaders’ aspirations.<sup>41</sup> Early settlers also abandoned lands they were trying to claim when they ran out of money or returned east because of Indian attacks and harsh winter conditions. However, backed up by protective fortified settlements such as Boonesborough, many persisted, and, after the Revolution, immigration exploded. Since squatter’s claims had no legal basis, everyone had to buy land. Land that had been cheap became expensive because of demand and speculators bidding it up.

According to John D. Barnhart, small farmers moved to Kentucky for the land. They had been crowded out of the good farmlands of Pennsylvania and Virginia by

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three groups used Kentucky primarily for hunting for furs and food. Governor, later President, Thomas Jefferson of Virginia tried to force them to define their territories so he could secure peace treaties for them to sell their land. See Anthony Wallace, *Jefferson and the Indians: The Tragic Fate of the First Americans* (Cambridge: Harvard University Press, 1999).

<sup>39</sup> Ellen Eslinger, ed., *Running Mad for Kentucky: Frontier Travel Accounts* (Lexington: The University of Kentucky Press, 2004), 5.

<sup>40</sup> Aron, *How the West*, 84, found that in 1797 the surveyor general of Kentucky reported there were twice as many grants and claims to be settled as there was acreage in the state.

<sup>41</sup> Stephen Aron, “Pioneers and Profiteers: Land Speculation and the Homestead Ethic in Frontier Kentucky,” *The Western Historical Quarterly* 23.2 (May 1992), 179-182. See also Pratt Byrd, I: 186-187.

demographics and the push of new immigrants. They were escaping the rising land values of the fertile lowlands and the consolidation of yeoman farms into large plantations with which they could not compete.<sup>42</sup> One such farmer was Isaac Drake who, with wife, sister, and two babies, left Plainfield, New Jersey, in two horse wagons in the spring of 1788 in a convoy of thirteen families. As told by his son, Daniel Drake, who wrote about the first fifteen years of pioneer life,<sup>43</sup> the senior Drake had been the youngest and poorest of his family. He was limited in learning as was his wife, but he could read and write. He worked as a farmer, later a miller, often as a waggoner to support the family. Their first residence was a sheep pen attached to the side of a cabin until he managed to buy thirty-eight acres which he expanded to fifty by selling a wagon and one of his horses. Daniel Drake remembered absolute, grinding, monotonous, hard work and isolation as the family struggled to produce a “competence,” that is, as Daniel Vickers argued, a farm life which satisfied their needs, provided more than mere subsistence, and assured them “a degree of comfortable independence.”<sup>44</sup> Eventually they prospered enough to send Daniel to medical school. With a stake in the future of Kentucky as voters and with definite views about slavery, these Jersey men significantly achieved competence without owning slaves.

However, the Drakes did hire slaves: when his mother was sick and needed help, and when, now and then, his father needed labor by the day—“white hirelings being scarce.” Drake remembered that his father “never purchased a slave for two reasons: first, he had not the means; second, [he] was so opposed to slavery that he would not have

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<sup>42</sup> John D. Barnhart, “Frontiersmen and Planters in the Formation of Kentucky,” *The Journal of Southern History* 7.1 (Feb. 1941), 19.

<sup>43</sup> Daniel Drake, *Pioneer Life in Kentucky, 1785-1800* (1847), ed. Emmet Field Horine (New York: Henry Schuman, 1948).

<sup>44</sup> Daniel Vickers, “Competency and Competition: Economic Culture in Early America,” *William and Mary Quarterly* 47 (Jan. 1990), 3.

accepted the best negro in Kentucky, as a gift,” if compelled to keep him as a slave. Also, in addition to paying the hire, they “never failed to give something to the slave in return for the service.”<sup>45</sup> Likewise, Harry Toulmin, an Englishman, did not feel the need to rely on slaves. In a 1792 pamphlet for Englishmen moving to Kentucky, he argued that an industrious husbandman, not depending on slave labor or credit but only his own labor and that of his wife and two children, could pay off an initial land purchase of thirty acres in three years and find himself comfortable and independent.<sup>46</sup>

Larger farmers or plantation owners, on the other hand, were seeking new land because tobacco had exhausted the soil of eastern Virginia. Veterans of Virginia’s army and militias were also allocated good land if they actually settled it. For instance, Daniel Trabue, an early adventurer, former commissary at Harrod’s Fort, inheritor of a worn-out Virginia cotton plantation, and a Virginia militia veteran wanted his share of the new fertile land of Kentucky. Trabue had suffered deprivation from famine and winter conditions and had experienced fear from Indian attacks, but he came back three times to the Bluegrass. Free or cheap land, or land received as a reward in lieu of payment for soldiering, trumped the raw and dangerous world of the frontier. With a young man’s hopes of attaining independence, Daniel Trabue was a player at the beginning of this game by moving west from the settled side of Virginia to the empty, beautiful and fertile bluegrass fields of Kentucky country. He also brought slaves with him.<sup>47</sup>

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<sup>45</sup> Drake, *Pioneer Life*, 93.

<sup>46</sup> Toulmin, *A Description of Kentucky*.

<sup>47</sup> Trabue, being a Virginian from a middle-sized plantation, had grown up with a personal slave or control over slaves; it is possible he took for granted that a slave would accompany him to do the daily chores. In 1785 to settle his family and others in Kentucky, Trabue led seventeen slaves. According to Lucas, many Virginians brought their slaves with them to “help” in the backbreaking labor necessary for carving a farm from the frontier: 10% of the inhabitants of nearby Harrod’s Fort in 1777 were slaves. Marion Brunson Lucas, *A History of*

Daniel Boone, who has become inseparable from this stage of Kentucky's and America's history, also relied on slaves. When he escorted his family and others to settle Kentucky in 1773, they brought with them a number of slaves. Boone, a Quaker from Pennsylvania, had not been born into a slave-holding family. It is unlikely there were slaves in the household until he was fifteen when his father settled in the Yadkin Valley of North Carolina. There his brother Jonathan married into the Carter family who owned slaves on their plantation. Boone courted and married Rebecca Bryan who was from a prosperous slaveholding family, but there is no record of Daniel and Rebecca holding slaves when they lived in North Carolina.<sup>48</sup> Boone's contemporaries in the early Kentucky days—the Russells, the Hendersons, the Callaways, the Trabues—all held a number of slaves. They were accustomed to slavery, having been born and raised in prosperous families in eastern, tobacco-growing Virginia. According to biographer Meredith Mason Brown, though Daniel Boone owned slaves from time to time, “no surviving writing by or story about Boone indicates that he was wedded either to slavery or to its abolition.” However, “Boone's career inadvertently furthered the spread of slavery...” because he helped open up the Bluegrass to farming and the lucrative, labor-intensive cultivation of hemp.<sup>49</sup>

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*Blacks*, xv. See also eminent Kentucky historian Thomas D. Clark, *A History of Kentucky* (New York: Prentice-Hall, 1937), 274: settlers from the piedmont regions of adjacent Eastern states where slavery was “deeply rooted” brought their slaves with them.

<sup>48</sup> John Mack Faragher, *Daniel Boone: The Life and Legend of an American Pioneer* (New York: Henry Holt, 1992), 48: he speculated that “if they did not, it was simply because they could not afford to.” See also Jack M. Sosin, *The Revolutionary Frontier, 1763-1783* (New York: Holt, Rinehart and Winston, 1967), 174-5. Sosin wrote that pioneer families supplied their own labor but hired bonded labor and slaves. The percentage of slaves in the southern upcountry was smaller due more to “an initial lack of capital to purchase slaves” rather than “the distaste of the pioneers for servile labor.”

<sup>49</sup> Meredith Mason Brown, *Frontiersman: Daniel Boone and the Making of America* (Baton Rouge: Louisiana State University Press, 2008), 282.

However, though Boone had introduced some slaves into Kentucky, he had nothing to do with the 1792 constitution. Nor does his name appear on the list of credentialed “Gentlemen” who formed the First Kentucky Convention in December 1784.<sup>50</sup> In fact, according to Abernethy, none of the “real” pioneers was influential in the movement toward Kentucky statehood except Colonel Benjamin Logan. The Harrods, the McAfees, Calloways, and Boones were passed over in favour of later slaveholding arrivals like the Browns, Bullitts, Breckinridges, McDowells, Harts, George Nicholas, Harry Innes, Caleb Wallace—all of them played an important part in the 1792 convention and subsequent government. Stephen Aron explained that the image of an emblematic pioneer or backwoodsman like Boone gave way to commercial and manufacturing spokesmen like young Henry Clay who arrived in Kentucky in a period of consolidation and cultivation after it was fairly settled by men like Boone.<sup>51</sup> Kentucky historian George Chinn lamented that this new coterie of leaders superceded those fine old heroes with seemingly little respect for their great deeds.<sup>52</sup>

Barnhart also traced the shift in political influence from the frontiersmen to that of the planters. The number of small farmers and planters who wanted to purchase or squat the relatively inexpensive land of the Kentucky region of Virginia was initially small

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<sup>50</sup> Thomas P. Abernethy, ed., “Journal of the First Kentucky Convention, Dec, 27, 1784-Jan.5, 1785,” *The Journal of Southern History* 1.1 (Feb. 1935), 70-71. The *American National Biography Online* lists Boone’s administrative or leadership roles during the 1780’s and 1790’s as “sheriff, coroner, county lieutenant of Fayette County, deputy surveyor, lieutenant colonel of the militia, county representative to the Virginia state assembly—which he attended when Kentucky became a state in 1792—and trustee of Maysville.” He had not been elected to any of the constitutional conventions; in fact, during the ninth and tenth conventions, Boone’s public written concerns, as found in the Draper microfilms, were for gunpowder, lead, rifle flints and rations for the militia which was engaged in continuing Indian troubles near Point Pleasant. For the Lyman Copeland Draper Manuscript Collection see Josephine L. Harper, *Guide to the Draper Manuscripts* (Madison: Wisconsin Historical Society, 2004).

<sup>51</sup> Aron, *How the West*, 1.

<sup>52</sup> George Morgan Chinn, *Kentucky: Settlement and Statehood, 1750-180* (Frankfort: The Kentucky Historical Society, 1975), 426. See also Lowell H. Harrison, *op cit.* 8-10.



because of the threat of Indian warfare; correspondingly, the number of accompanying slaves was very small.<sup>53</sup> After the Revolution and the decline of Indian warfare, many whites immigrated in droves, pushing the population estimate from 150 family settlements in 1775 to 62,000 persons in 1788, enough for statehood.<sup>54</sup> Many of these were war veterans given land warrants by Virginia and planter families seeking large plantations of new fertile soil.<sup>55</sup> Though a small group, these planters, mostly educated and from higher strata of society, had a vested interest in protecting their newly acquired property. Since they were not inexperienced with government, by 1785, they soon formed the ideological and emotional basis of at least two political “parties.” Patricia Watlington defined these “parties” as the “court”—lawyers, judges, merchants—and the “county”—planters, surveyors, gentlemen. She argued that these later two “parties” formed the “articulate center.” She labeled yeoman farmers, men of lesser holdings, and laborers hoping to acquire land as “partisans.” Aron named “partisans” as “plain farmers” and the “articulate center” as “gentry.” Harrison and Klotter identified the two parties respectively as “democrats” and “aristocrats.” Generally, they were based on those who had few or no acres and those who owned thousands. Such were the political groupings elected to the ten conventions leading to statehood.<sup>56</sup>

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<sup>53</sup> Approximately 150-200 as explained in section I:iv.

<sup>54</sup> Harrison, *Kentucky's Road to Statehood*, 5-8.

<sup>55</sup> Barnhart, “Frontiersmen and Planters,” 19. See Coward, *Kentucky*, 4: Virginia land warrants for military were 100 acres for common soldiers, and 5,000 of choice land for colonels. Many of the landed gentry raised militia groups and served as “Colonels.”

<sup>56</sup> Watlington, *The Partisan Spirit*, 43. Also on 232, she concluded that all three parties as political groupings were well established before 1785 and suggested that the national parties of 1792-1795 had already existed on the state level in Kentucky. In an appendix (260-264), Watlington recognized that she has been highly criticized for her interpretation of “parties” in Kentucky. She reviewed the definitions of four political historians between 1963 and 1968 (Roy F. Nichols, Richard P. McCormick, Richard Hofstadter, and William N. Chambers). According to the criteria established “by three of the four definitions of party given by historians, the pre-1792 Kentucky groupings can be considered parties.” Her primary definition was based on Chambers:

Finally, two Virginians who came to Kentucky and featured prominently in the constitutional convention were David Rice and George Nicholas. David Rice (1733-1816), son of a Virginia plantation family and college graduate, served as a Presbyterian minister in various churches in Virginia before immigrating to Danville in Mercer County in 1783. Not well-off, he eventually acquired 1,600 acres and possessed at least four slaves which he emancipated at his death.<sup>57</sup> He was instrumental in establishing the Kentucky Presbytery, the Transylvania Seminary, and public elementary schools. Aligned with the “partisan” party, he became involved in attacking slavery because of his long-time disgust with the institution. The other Virginian, and fellow Mercer County resident, George Nicholas (1754-1799), college graduate, lawyer, and Virginia militia colonel, came to Kentucky in 1788. From a prominent Virginia Plantation society, he had served in the Virginia House of Assembly, debated with Patrick Henry, and had acquired much political skill. Nicholas built a “fine brick house” on an “extensive” plantation and held forty-six slaves on at least 20,000 acres of land. He was politically neutral at first, but became the spokesmen for the “articulate center” on slavery.<sup>58</sup>

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a party offered “a distinguishable set of perspectives, or ideology, with emotional overtones.” William N. Chambers, *Political Parties in a New Nation: The American Experience, 1776-1809* (New York: Oxford University Press, 1963), 45-48. Watlington also referred to letters of the day that called the discontented landless, about half of Kentucky, “partizans” (50-52). In her review of numerous biographies, she concluded that Kentuckians “grouped themselves in a way we now call ‘political,’ and so we can refer to them... as a ‘party.’” Finally, Lowell Harrison relied on her descriptions of the three parties throughout his 1992 history, *Kentucky’s Road to Statehood*, 21. See also 71: Harrison quoted from a John Brown letter to James Madison about “faction,” referring primarily to the partisan group. The last two are Aron, *How the West*, 96; and Lowell Hayes Harrison, and James C. Klotter, *A New History of Kentucky* (Lexington: University Press of Kentucky, 1997), 76.

<sup>57</sup> Byrd, Part I: 201; Andrew Lee Feight, “James Blythe and the Slavery Controversy in the Presbyterian Churches of Kentucky, 1791-1802.” *Register of the Kentucky Historical Society* 102.2 (Winter 2004), 27.

<sup>58</sup> Watlington, *The Partisan Spirit*, 200; Byrd, Part I: 201-202.

## CONVENTIONS LEADING TO A CONSTITUTION

Seven years passed between December 27, 1784, when Colonel Benjamin Logan had called a number of citizens to meet at a first convention to determine Kentucky's political situation and April, 1792, when the delegates of the tenth convention voted on the substance of the constitution which provided the legal basis for the State of Kentucky on July 1, 1792. These ten conventions have been enumerated and analyzed in a number of articles and histories from Kentucky's early days to the bicentennial in 1992.<sup>59</sup> During the first nine conventions, slavery was not one of the issues on the table. The main issues were self-defense; inconvenience of representation in faraway Richmond; taxation, land surveying and redistribution of land; the establishment of a local court system; need for a printer for court reports, commercial announcements, and news; free trade and navigation on the Mississippi; possible unilateral independence; and worries about the federal government. Another crucial issue was equal representation: the partisans wanted suffrage for all free men, regardless of property.

Slavery, however, was not on the table according to the extant notes of the proceedings of the first convention.<sup>60</sup> Nor were the issues of slavery, runaway slaves,

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<sup>59</sup> A general outline of the conventions can be found chronologically from 1806 to 1997 in William Littel, *Political Transactions In and Concerning Kentucky: From the First Settlement Thereof, Until It Became an Independent State in June, 1792* (1806), Darlington Digital Library, 2007, 30 April 2010 <<http://digital.library.pitt.edu>> ; Humphrey Marshall, *op.cit.*; Bennet AndersonYoung, *History and Texts of the Three Constitutions of Kentucky: with Illustrative State History Prefacing Them and Marginal Notes Showing All Alterations in the Fundamental Law* (Louisville, KY: Courier-Journal Job Print, 1880); John Mason Brown, *The Political Beginnings of Kentucky, a Narrative of Public Events Bearing on the History of That State Up to the Time of its Admission* (Louisville: J. P. Morgan, 1889); Willis, "History of Kentucky Constitutions" (1931); Thomas Marshall Green, *The Spanish Conspiracy: A Review of Early Spanish Movements in the South-West* (Gloucester, MA: Peter Smith, 1967); Watlington, *The Partisan Spirit* 1972); Stuart Seely Sprague, "Kentucky Politics and the Heritage of the American Revolution: The Early Years, 1783-1788," *Register of the Kentucky Historical Society* 78.2 (Spring 1980), 98-114; Harrison, *Kentucky's Road* (1997).

<sup>60</sup> See Abernethy, "Journal," 67.

slaves as property, slaves as freedmen, slave markets, or emancipation reported in any of the studies of Kentucky conventions prior to 1791 except in one curious appendix.

William Littell appended the second convention's "Petition to the Honourable General Assembly of Virginia" for statehood in May, 1785. Reflective of the tone and anger that rejected the rule of George III and the English Parliament of ten years earlier, the representatives, speaking for the people of Kentucky, hoped that the "spark which kindled the flame of liberty" would guide the Assembly to "redress manifest grievances, to embrace the singular occasion reserved for them by divine providence, to originate a precedent which may liberalize the policy of nations, and lead to the emancipation of enslaved millions."<sup>61</sup>

"Enslaved millions" was an exaggeration if applied to Kentucky at that time with fewer than 60,000 white people. However, the petition helps understand the mind-set of the petitioners. They were asking Virginia to give them self-government just as the American Revolution had brought self-determination to the Colonies which had been virtually "enslaved" by the British government. They felt themselves enslaved since they lacked the *national* and international recognition which guaranteed them "security and happiness," "private justice and public honor." They considered themselves freemen who spoke the "unadorned language of independence, supported by conscious rectitude." They argued for release from *political* slavery as reflected the rhetoric of the Revolution, but not the actuality of "Negro" slavery.<sup>62</sup> Perhaps they took for granted that they were speaking about freeing white men because in their accompanying address to the people of Kentucky to accept this petition to the Virginia Assembly, there is no mention of "Negro"

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<sup>61</sup> Littell, *Political Transactions*, Appendix, 11.

<sup>62</sup> Willie Lee Rose, "The Domestication of Domestic Slavery" (1973), In *Slavery and Freedom*, ed. William W. Freehling (New York: Oxford University Press, 1982), 20.

slavery as one of the issues behind separation.<sup>63</sup> Nor might the issue of slavery have come up because, at that time in 1785, there were only about 4,000 enslaved African Americans in Kentucky, not a noticeable population pressure point until, perhaps, that number tripled in five years.<sup>64</sup>

#### **AFRICAN AMERICANS: ENSLAVED AND FREE**

African Americans have a history in Kentucky as old as the first explorers. Kentucky historian Marion B. Lucas traced the history back to Christopher Gist, a Yadkin River Valley neighbor of Daniel Boone. Gist, a surveyor and mapmaker, explored Kentucky lands bordering the Ohio River in 1751 with his black “servant” and met a black man living in an Indian town on the Scioto River which transected the Ohio. A slave guided Daniel Boone on one of his early 1760 hunting trips across the Blue Ridge Mountains into Kentucky.<sup>65</sup> Daniel Trabue briefly related stories of enslaved men and women in the pioneer settlements. Lucas summarized the story of Monk Estill who was freed in 1782 after bravely assisting the settlers in Indian attacks near Boonesborough. A skilled woodsman, maker of gunpowder, farmer, talented musician, contributor to his community, he also fathered Kentucky’s first free black child.<sup>66</sup> Though

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<sup>63</sup> Marshall, *The History of Kentucky*, Vol I.

<sup>64</sup> Lucas, *A History*, xiv; Lucas used the John Filson estimate from Filson’s 1784 study, *The Discovery, Settlement and Present State of Kentuke* (Ann Arbor, MI: University Microfilms, Inc., 1966). See next section I:iv for statistics.

<sup>65</sup> Marion B. Lucas, “African Americans on the Kentucky Frontier,” *Register of the Kentucky Historical Society* 95.2 (Spring 1997), 121 and Lucas, *A History*... xiii.

<sup>66</sup> Lucas, “African Americans,” 126-7.

there are other examples of black settlers, African Americans pioneered Kentucky as slaves—“unwilling pioneers” according to historian Ellen Eslinger.<sup>67</sup>

According to Lucas, although some came singly or in small groups with their owners, “thousands more came to Kentucky in chains.” He described African Americans as “handcuffed men chained together in long lines [followed by] women and children who plodded behind, followed by supply wagons and pack horses. Either tramping behind wagons or driving them through the Cumberland Gap, either floating or polling down the Ohio River, “they came in shackles”—shackled because the Ohio River and freedom were just too close. Most came as slave laborers who undertook the drudgery of carving a farm from the Kentucky wilderness for the white settlers.<sup>68</sup>

From approximately 150-200 slaves in 1776, the number grew to 4,000 in 1784 and then tripled to 12,430 in 1790 with 114 freemen.<sup>69</sup> In a decade, that number exploded to 40,434 persons listed as slaves in the 1800 federal census. However, slaves still totaled only 18.26% of the population of the state. This was only a slight increase up from 16.34% slaves reported in the first US census of 1790.<sup>70</sup> Approximately 25% of white households owned slaves, with an average of four slaves: most with one or two, the planters with many.<sup>71</sup> These figures indicate that 83.64% of Kentuckians, or a vast majority of 51,131 whites, did not hold slaves in 1790.

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<sup>67</sup> Ellen Eslinger, “The Shape of Slavery on the Kentucky Frontier, 1775-1800,” *Register of the Kentucky Historical Society* 92 (1994), 6.

<sup>68</sup> Lucas, *A History*, 2.

<sup>69</sup> *Ibid.*, xv.

<sup>70</sup> Lowell Hayes Harrison and James C. Klotter. *A New History of Kentucky*. (Lexington: University Press of Kentucky, 1997), 71-72.

<sup>71</sup> See Chapter Four, land holders who voted to keep the proslavery clause in the 1792 constitution owned an average of 12 slaves. See Figure 4 in Chapter Five for further statistics.

Asa Martin remarked that since “frontier life tended to produce self-reliance, independence, and individuality,” it fostered “a sense of equality” leading to a democratic society antagonistic to slavery. He argued that slavery would not be an important political issue since a vast majority of the population did not hold slaves; however, that situation, favorable to Kentucky becoming a free state, was soon challenged.<sup>72</sup> According to Clark, many planters who had purchased or received tracts of very fertile land in the Bluegrass, where Lexington and Danville were centered, sent their slaves and overseers ahead of them to clear the forest, start planting, and build cabins, barns, and homesteads. Labor was essential for developing immense tracts of land, and most of the whites who managed to get land were working for themselves. Since planters came from areas where slavery had long been deeply rooted, they found slavery a valuable asset and imported numerous enslaved people.<sup>73</sup>

Lucas argued that, having lived through the dangers and isolation of the frontier and having provided the grinding physical labor to clear forests, plant crops, tend stock, build homes for white people and cabins for themselves, a “strong interdependence among blacks and whites existed on the Kentucky frontier.”<sup>74</sup> These early settlers needed each other—at least on the small farm where only one or two slaves were held and everyone was needed to secure and grow the farm. According to Hudson, a slave might have initially been essential for survival and development; however, once a yeoman’s competence was achieved, slaves became necessary for comfort and convenience; a larger and more affluent planter might see slaves as “farm machines” and symbols of wealth. Slaves could be forced to perform basic, repetitive, backbreaking or threatening

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<sup>72</sup> Martin, *Anti-slavery Movement*, 12.

<sup>73</sup> Clark, *A History*, 274-5.

<sup>74</sup> Lucas, “African Americans” 128.

work for long hours with little compensation or incentive except punishment.<sup>75</sup> Slaves as a source of labor then led to markets for purchasing or renting that labor and an internal slave trade began to flourish as the number of children, born in Kentucky and enslaved for life, grew to maturity.

If a settler had not brought a slave with him, how else could he purchase one if he or his extended family began to prosper? According Eslinger, a study of tax records for the western counties prior to 1792 suggested “a lively intraregional slave market.” Citing Madison County among others—for instance where Boonesborough was situated—she found an increase of “at least 13.4 percent” of taxes paid by owners on their slaves in 1792 compared to 1787. Cautioning that these records represented only a “minimum level of activity,” she then estimated similar increases of 10% in other central Bluegrass counties. Therefore, settlers who may have come with no or few slaves added to their holdings after their arrival in Kentucky. Slaves were being imported from Virginia and Maryland, and they were being bought and sold in Kentucky. Eslinger surmised that “individual slaveholdings increased in ways which cannot be reasonably accounted for by natural increase.”<sup>76</sup>

Eslinger concluded that “slavery thrived on American frontiers wherever it was not prohibited by national law because of the virtually insatiable demand for the unskilled labor needed in opening new land for agriculture.”<sup>77</sup> However, she noted that there was a time of thoughtful caution because the “legal future of western slavery” was “uncertain.” She quoted from several letters: the first written by John Breckinridge in 1792 who was

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<sup>75</sup> J. Blaine Hudson, “Slavery in Early Louisville and Jefferson County, Kentucky, 1780-1812,” *The Filson Club History Quarterly* 73.3 (July 1999), 261-263.

<sup>76</sup> Eslinger, “The Shape of Slavery,” 8-9.

<sup>77</sup> *Ibid.*, 23.



“somewhat afraid of the Kentucky politicians with respect to negroes.” The second was by David Meade who wrote in 1798 that he “would not advise Slaveholders to come here immediately”<sup>78</sup> because there was a rapidly growing religious culture in Kentucky which formed a strong base for emancipation. Despite the growth of slavery in Kentucky in the decade before the convention, emancipation remained possible.

The frontier had been settled. Kentucky eventually qualified for statehood. The State of Kentucky needed a constitution. The people of Kentucky formed county committees to elect representatives to their tenth statehood convention, the final one to determine the state constitution. They elected representatives who would speak directly for them, representatives who held the same opinions as they did. Influenced by differing political ideologies and economic status, the representatives listened to a number of ideas about issues of governance, suffrage, and land redistribution. Everyone was vitally concerned with the issue of slavery. Slavery was tabled for discussion during the second week of April 1792. First, David Rice detailed the antislavery position. Then George Nicholas countered with a proslavery argument. The members at the convention had to decide on slavery’s continuance or the gradual emancipation of slaves.

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<sup>78</sup> Ibid, 12.

## CHAPTER TWO: THE ANTISLAVERY POSITION AND DAVID RICE

“Holding men in slavery is the national vice of Virginia; and, while a part of that state, we were partakers of the guilt. As a separate state, we are just now come to the birth; and it depends upon our free choice, whether we shall be born in this sin, or innocent of it. We now have it in our power to adopt it as our national crime; or to bear a national testimony against it. I hope the latter will be our choice; that we shall wash our hands of this guilt, and not leave it in the power of a future legislature, ever more to stain our reputation or our conscience with it.” David Rice <sup>79</sup>

According to historian E. M. Coulter, the tenth convention, the one designated to write the constitution, convened on April 2, 1792, and completed its job in sixteen days. He noted that it was surprisingly free of the bitter commentaries and strident debate that had preceded it for months, especially in the letters published by the newly established *Kentucky Gazette*. First, and relevant to an antislavery vote, debate had centered mostly on the suspicion that aristocratic politicians would ignore the voice of the common man.<sup>80</sup> For instance, “Will Wisp” objected to “A.B.C.” who had written that “the common people are fools” and needed to be governed, not to participate in government and that only “great men of learning” are fit to govern. “Will Wisp” considered such “designing” men “rogues.” He argued that if, as great men claim, all power comes from the people, should it not be retained by the people? Second, there was a loud protest against slavery,

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<sup>79</sup> David Rice, *Slavery Inconsistent with Justice and Good Policy; Provided by a Speech Delivered in the Convention, Held at Danville, Kentucky* (Philadelphia, 1792). Reprinted in London: M. Gurney, 1793. American Libraries Internet Archive. 15 August 2010 <<http://www.archive.gov>> 24. See Works Cited for different printings. All page references will be to the 1793 M. Gurney publication.

<sup>80</sup> E. Merton Coulter, “Early Frontier Democracy in the First Kentucky Constitution,” *Political Science Quarterly* 39.4 (Dec. 1924), 672-675.

mostly from the Baptist churches, a protest directed at the large-land holders.<sup>81</sup> However, during the convention, the issue of slavery provoked days of unrecorded debate about the proposed Article IX which would have entrenched slavery in the constitution and prevented the legislature from simply making any subsequent laws to emancipate slaves.<sup>82</sup>

In the week before the members voted whether to expunge the article, David Rice rose to deliver a speech. His speech, written and circulated three months before the convention and later printed as *Slavery Inconsistent with Justice and Good Policy*, followed the lines of a classic argument with which all the legislators would have been familiar.<sup>83</sup> After an introduction leading to a question, he established the background to the problem, gave reasons to support his two major points about justice and good policy, then refuted existing objections to conclude with an emphatic, upper-case plea “TO RESOLVE UNCONDITIONALLY TO PUT AN END TO SLAVERY IN THIS STATE.” Historian Dwight Lowell Dumond praised the masterful speech as “the most comprehensive indictment of slavery to that time, one of the finest of all time.”<sup>84</sup>

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<sup>81</sup> “Will Wisp,” *Kentucky Gazette*, October 13, 1791.

<sup>82</sup> *Journal, op cit.*: there were at least seven days between Rice’s resignation and the vote.

<sup>83</sup> David Rice, *Slavery*. There are two versions of this publication in 1793 and 1812. The 1812 version is missing 23 internal paragraphs and was reprinted in New York: Samuel Wood, 1812. Google Books pdf. 15 May 2010 <<http://books.google.ca>>3-13. All page references herein will be to the 1793 M. Gurney reprint. See Works Cited for three different publications. See also Lowell H. Harrison, *The Antislavery Movement in Kentucky* (Lexington: The University Press of Kentucky, 1978), 19.

<sup>84</sup> Dwight Lowell Dumond, *Antislavery: The Crusade for Freedom in America* (Ann Arbor: University of Michigan Press, 1961), 61-2. Quoted by Harrison, *Antislavery Movement*, 19.

## DAVID RICE'S ARGUMENT AND REASONS

Respectfully addressing about two-dozen members in daily attendance, the sixty-year-old minister David Rice explained how his happiness had been diminished by “hearing a great part of the human species groaning under the galling yoke of human bondage.” For nearly forty years he had seen the misery endured by his fellow-men whom he called his “brethren.” The misery they have suffered and the subsequent guilt he has experienced have filled his “soul with anguish.”<sup>85</sup> Since he has “read the anger of Heaven” in “their distresses,” he felt compelled to do everything he could to persuade this body to relieve the sufferings of the enslaved and no longer partake in the guilt of slavery. Therefore, he asked the assembly to consider “Whether slavery is consistent with justice and good policy?”<sup>86</sup>

Before launching into his answer, he sought to establish the primary condition underlying his argument: “a slave is a human creature.” As a “rational” human creature, he was a creature of God and, “with respect to liberty,” he was “equal.” Unfortunately, because of slavery, this creature has been “reduced by mere power to an absolute unconditional subjection” to the will of another. The slave himself has not forfeited his right to liberty or possessions. Taking away a creature’s liberty was much more injurious than robbing him of his possessions because the slave was also robbed of his “capacity of acquiring and possessing” property.<sup>87</sup> Reduced by indignities, the more abject they have become, the more wretched their condition, and the more “bestial” they seemed to be in

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<sup>85</sup> Robert Hamilton Bishop, *An Outline of the History of the Church of Kentucky, During a Period of Forty Years Containing the Memoirs of Rev. David Rice* (Lexington: Thomas T. Skillmann, 1824), 57. His friend and biographer supported Rice’s attention to African Americans and thought that Rice’s “success was greater among blacks than among the whites.”

<sup>86</sup> Rice, *Slavery*, 3.

<sup>87</sup> *Ibid.*, 4.

the eyes of their white masters. Consequently, it was easy to think of the enslaved as things, as useful property to be bought, traded, sold. As property, they could own no property: the enslaved could not even have vested interest in themselves, their spouses, their children, their dwellings, or their work. Rice saw reduction of the enslaved as “a degradation to our own character,” a foul and black stain, “the ruin of our own nature.”<sup>88</sup>

Where, he demanded in a series of short questions, did this right come from? “On what is this right founded?” “Has the great King of Heaven... given this extraordinary right to white men over black men?” Who said that this abject, wretched creature was to “minister to the ease, luxury, or avarice” of white men? Where was it written? “Where is the charter?” He continued by arguing that it certainly had not come from “the great King of Heaven” because “a slave is made after the image of God.” “A slave has the capacities of a free moral agent” and “is accountable to his Maker for his conduct.” No human legislature could take this God-given right away and make the slave answerable only to his earthly master. If there were laws that limited a human creature’s right, “the laws of man are wrong...”<sup>89</sup>

He continued explaining that the actions of men were also wrong. Slave holders—not just “cruel masters” and “needy creditors”—could separate slave families by selling loved ones held dear in spite of the religious precept that family was a sacred institution. Slaveholders could also command slaves to commit immoral or criminal acts like stealing or suffer the penalty of extreme punishment. Masters regularly violated the chastity of female slaves while their society held high standards for white women. Masters deprived slaves of religious and moral instruction and education. In short “the master is the enemy

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<sup>88</sup> Ibid., 5.

<sup>89</sup> Ibid., 6.

of the slave.” Worst of all, the slave’s posterity was confined “in this bottomless gulph of wretchedness forever.” All this was absolutely unjust.<sup>90</sup>

The second part of his argument questioned whether slavery was consistent with good policy. How good was a policy which created laws to which the enslaved had not consented? The enslaved was allowed “no property,” received “no advantage,” “owes no allegiance,” “receives great injury,” was “under no obligations,” and had “no interest” in that society’s prosperity. If the master has actually made war on the slave and the slave’s recourse was to resist or rebel, could a government be safe? If invaded, on whose side would the slave fight? Everyone was aware of the large numbers of slaves who went over to the British side in the Revolutionary War.<sup>91</sup> And everyone was fearful of insurrection. “Can it be good policy?” he reiterated.<sup>92</sup>

Then he questioned the model of America as the land of the free. “In America,” he said, “the slave is a standing monument of the tyranny and inconsistency of human governments.” Governments should be consistent with what they say and do. America promised the natural human right of being equal and enjoying property yet denied the slave. The cornerstone of good government was consistency, but slavery proclaimed before the world America’s inconsistency. How could other nations trust America if “we are capable of enslaving mankind in direct contradiction to our own principles?” If such injustice were applied to the black man, it could be extended to any different white man

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<sup>90</sup> Ibid., 8.

<sup>91</sup> See Betty Wood, *Slavery and Colonial America, 1619-1776* (Toronto: Rowman & Littlefield, Inc., 2005), 82-85 for Lord Dunmore’s Proclamation and the Ethiopian Regiment. She traced critiques and defenses of slavery and the dilemmas faced by Southerners of conscience: “As far as most of them were concerned, the ending of slavery, whether gradually or over a period of years, threatened them with many, and possibly insoluble, problems.”

<sup>92</sup> Rice, *Slavery*, 9.

(or foreign nation).<sup>93</sup> Consequently, in addition to being unjust, slavery was not good policy.

However, Rice continued, some would object that by ending slavery the master would be denied his right to property, to owning slaves. He agreed that this was a serious objection, but he argued that converting slaves into property was fundamentally wrong. It was “against the law of humanity, common sense, reason, and conscience.” How, he asked, could a legislature sanction laws that made people property? Legislatures did not have the right to property in man as they did in land which they occupied and governed; therefore, they could not transfer such a right by any law. Slaves had not signed over their property rights in themselves to the legislatures. Human legislatures were subject to Divine Rule and could not take away God-given rights.<sup>94</sup> Rice admitted that the master would suffer disadvantage if deprived of his “property,” but the enslaved suffered the greater injustice. A master might be deprived of his investment and opportunity to make money, but a slave was deprived even of his capacity to prosper.

Next, he said, others might protest that masters bought people already enslaved by their fellow Africans. Yes, he agreed that some of that went on in local tribal warfare, but not on a continental basis. His argument was that they were enslaved in huge numbers and transported across the ocean because Europeans encouraged some Africans to sell other Africans for profit. Slaves were stolen from Africa and forced into slavery and their posterity subjected to wretchedness forever.<sup>95</sup>

His next counter-argument was directed toward those who traced slavery through the Old Testament to Abraham and the law of Moses. He urged his listeners to look more

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<sup>93</sup> Ibid., 9-10.

<sup>94</sup> Ibid., 12-13.

<sup>95</sup> Ibid., 15.

closely at the meaning of scripture rather than the literal and superficial interpretations, used to justify slavery, which have been “wickedly pressed into the services of Mammon.” Perhaps, though it was impossible to know the conditions of their servitude, servants in ancient times served for the term of their lives for whatever reasons, but nowhere did the Old Testament condone the perpetual enslavement of their children. Nor were the Israelites sent into slavery by divine law three thousand miles distant from their homes. Granted, Paul the Apostle advised servants “to be contented with their state of servitude and obedient to their masters”; however, Paul was not in the position to urge that servants be freed because all were under the Roman yoke and any suggestion of insurrection would have brought “certain destruction.” Moreover, Rice concluded with the New Testament statement that should trump slavery: “*Whatever ye would that men should do to you do you even to them.*”<sup>96</sup>

Finally, in strong and sometimes sarcastic language, Rice talked at length about the effects of slavery in the South. Sons of gentlemen were becoming “useless” members of society, interested only in “pleasure and dissipation”: “intolerable nuisances” and “pernicious pests,” dependent on slaves for their every whim and the simplest of work like holding their horses or washing their dishes.<sup>97</sup> Great estates of the south were

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<sup>96</sup> Ibid., 20.

<sup>97</sup> The lamentation is reminiscent of Landon Carter’s own complaints about his son Robert who was drinking and gambling away his inheritance. See Jack P. Greene, *Landon Carter: An Inquiry into the Personal Values and Social Imperatives of the Eighteenth-Century Virginia Gentry* (Charlottesville: University Press of Virginia, 1965) and Rhys Isaac, *Landon Carter’s Uneasy Kingdom: Revolution and Rebellion on a Virginia Plantation* (New York: Oxford University Press, 2004). See also Jefferson “Manners,” *Notes*, Query 18: “With the morals of the people, their industry also is destroyed. For in a warm climate, no man will labour for himself who can make another labour for him. This is so true, that of the proprietors of slaves a very small proportion indeed are ever seen to labour.” See David McCullough, *John Adams* (New York: Simon & Schuster, 2001), 553: Abigail Adams was depressed that the White House needed thirty slaves to staff it: “The whole system struck her as woefully slow and wasteful, not



impoverished by the counterproductive labor of slaves who had no vested interest in the prosperity of the plantation. Slaveholders needed to bring in even more slaves to maintain production on their expanding landholdings. Consequently, white farmers were being driven off and replaced by black slaves. The sheer numbers of discontented slaves fomented insurrection.<sup>98</sup>

Slavery was contrary to the human spirit, Rice continued. He said that forty years ago he came to believe in his heart that slavery was wrong, “unreasonable and wicked.” He believed it as a law of his nature, inscribed in every human heart. He argued that white people would never be content as slaves. How, then, could they be content to perpetuate slavery? Was it because they believed the enslaved might be unprepared for emancipation since they have long been denied and deprived of the opportunities and instruction to make them useful citizens. They might become a burden on society, even resorting to crime to sustain or revenge themselves. But, shifting responsibility to all members of the convention including himself, he argued that Kentuckians had to choose the lesser evil and end slavery for the sake of subsequent generations. Slavery was neither just nor good policy, he reiterated. Rice finished his main argument powerfully by demanding that slavery be stopped, now, unconditionally, peaceably—lest the country suffer dire consequences.<sup>99</sup>

Yet Rice was not finished with this demand. He had a plan. This plan, according to historians James Lee Feight, Walter B. Posey, and John D. Barnhart, was similar to that of the Presbyterian Synod of 1787 which proposed gradual emancipation of those

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to say morally wrong. She watched slaves, clothed in rags at work outside her window, hauling away dirt and rubble with horses and wagons, while their owners stood by doing nothing.”

<sup>98</sup> Summary of concerns from Rice, *Slavery*, 10-12 and 15.

<sup>99</sup> *Ibid.*, 24. His warning will be elaborated in Chapter Five.

held in evil bondage.<sup>100</sup> At the end of his speech Rice argued for a gradual emancipation he was certain the legislature would have the power to effectuate:

This evil is a tree that has been long planted, it has been growing many years, it has taken deep root, its trunk is large, and its branches extended wide: would it be cut down suddenly, it might crush all that grow near it: should it be violently eradicated, it might tear up the ground in which it grows... It is true, the slaves have a just claim to be freed instantly: but... we have rendered them incapable of enjoying, and properly using this their birth-right; and therefore a gradual emancipation only can be adviseable...The legislature, if they judged it expedient, would prevent the importation of any more slaves; they would enact that all born after such a date should be born free; be qualified by proper education to make useful citizens; and be actually freed at a proper age.<sup>101</sup>

Thus Rice's plan for gradual emancipation contained three important steps. First, Kentucky must stop importing slaves; therefore, any African American arriving in bondage would be declared free. Second, current slaves in Kentucky need to receive a proper education for citizenship. Third, all slaves would be freed after a certain age, such as twenty-one when they would be old enough to support themselves.

As strong as this argument seemed for gradual emancipation, David Rice himself, born on a small Virginian cotton plantation, had acquired 1,600 acres of land in Kentucky, and owned slaves at the time of this speech.<sup>102</sup> Considered a "humane master"

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<sup>100</sup> Feight "James Blythe," 23; Walter Posey, "The Slavery Question in the Presbyterian Church in the Old Southwest," *The Journal of Southern History* 15.3 (Aug. 1949), 314; Barnhart, "Frontiersmen and Planters," 30-3. However, Aron, *How the West Was Lost* and Byrd, Part I: 193, did not refer to any plan in their summaries on his speech. The discrepancy might lie in the difference between the 1812 Samuel Wood and 1792 M. Gurney versions. The former does not contain twenty-three paragraphs found in the original which included the plan.

<sup>101</sup> Rice, *Slavery*, 22-23.

<sup>102</sup> Byrd, Part I: 201. Having listed the number of slaves of most of the delegates, Byrd could not find a record of exactly how many slaves Rice would have paid tax for in 1792.

by his friend and biographer Robert Hamilton Bishop,<sup>103</sup> Rice continued for the next twenty-four years to own them because he feared for their personal safety if emancipated. When he died in 1816, he willed a slave woman and her children to his daughter with the proviso that the males be emancipated at age twenty-five and females at twenty-three.<sup>104</sup>

However, he had said his piece and would have been received with attention. Since he had been popular enough to be invited back to Kentucky in 1783 after his first brief visit and a few impressive sermons, since he had been noted for developing a “new and quieter type of evangelism,” and since he had been elected to positions of responsibility and respect in the Transylvania Seminary and the Presbytery, “Father” Rice would have been a voice of reason and respect to listen to.<sup>105</sup> According to Asa Earl Martin, Rice’s address was “one of the most earnest and forceful productions of the period.”<sup>106</sup> Rice’s voice was heard beyond the convention: his summary of the emancipation argument was initially printed in Philadelphia in 1792, then in London in 1793 and twice in New York in 1804 and 1812.

#### **EARLY CHURCH ABOLITION MOVEMENTS**

David Rice was familiar with the Presbyterian Synod of New York and its plan for emancipation because he was the central focus of Presbyterianism in Kentucky from his arrival at age fifty in 1783 when he was elected as pastor in Danville with three

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<sup>103</sup> Bishop, 111.

<sup>104</sup> Feight, “James Blythe,” 27; Rice may have wanted to save them from being “subjected to humiliating restrictions” because Virginia had made manumission extremely difficult for masters and their slaves, according to Winthrop D. Jordan, *White Over Black: American Attitudes Toward the Negro, 1550-1812* (Chapel Hill: University of North Carolina Press, 1968), 123-125 .

<sup>105</sup> Vernon P. Martin, “Father Rice, The Preacher Who Followed the Frontier,” *The Filson Club History Quarterly* 29 (Oct. 1955), 325-327.

<sup>106</sup> Asa Martin, *Anti-Slavery Movement*, 14.

hundred communicants. He was also appointed as a trustee and later Chairman of the Board of the Transylvania Seminary and served as first Moderator of the Presbytery of Transylvania. Since his opposition to slavery was well-known, he was elected to the tenth convention and assumed leadership of the antislavery forces.<sup>107</sup> His actions, besides this speech, during the convention and their effect will be discussed in Chapter IV.

Before 1792, Rice's church was not the only one to oppose slavery. The Quakers had a long history even before the American Revolution of attacking slavery; as the colonies were losing the war, Congregationalists had preached that God was punishing them for the iniquity of slavery.<sup>108</sup> In 1784 the Methodists were also affected by the arguments arising from the Revolutionary war and constitutional debates on personal rights and freedoms. Arguing that slaveholders could not be members of their congregations, they strongly condemned human bondage and started a petition drive in 1785 in Virginia to gradually emancipate slaves.<sup>109</sup> Their movement was vigorously countered by proslavery petitioners who wanted to keep their property secure. Though the Virginia Assembly rejected the Methodists' emancipation petition, the debate was kept alive in the churches. The third major religious group, the Baptists, arrived in 1788 at a similar stand condemning slavery and eventually asked its members to gradually

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<sup>107</sup> Harrison, *Antislavery Movement*, 19.

<sup>108</sup> Mason, *Slavery and Politics*, 10-13. Quakers began questioning the morality of slavery as early as 1682, but antislavery progressed slowly since many prominent Quakers were wealthy slaveholders.

<sup>109</sup> The petition is reprinted in Kamiski, *A Necessary Evil*, 33-34. The Methodists argued that Negroes had been robbed of liberty and justice. They argued that differences in color, hair and features were beneath talking about, that the fear of Negroes committing enormities after emancipation was groundless, that magistrates and houses of correction could readily suppress idleness in both blacks and whites. Primarily Negroes have been so debased that slavery "incapacitates the human Mind... for the Reception of the Noble and enlarged principles of the Gospel." For further insight into petitioning as a form of people representing their concerns to government, see James Rood Robertson, *Petitions of the Early Inhabitants of Kentucky to the General Assembly of Virginia 1769-1792* (1914), in *The First American Frontier* (New York: Arno Press and the New York Times Collection, 1971).

emancipate their slaves.<sup>110</sup> The Baptists were divided on a number of issues: some argued between immediate emancipation and a gradual system of emancipation, some advocated non-fellowship with slaveholders, and some denounced all discussion about slavery since it confused religion with politics.<sup>111</sup>

According to Andrew Lee Feight, American Presbyterians could argue that the enslaved were equal spiritually because they had souls made in the image of God—but in reality most Americans thought slaves were not politically equal. Debased, kept ignorant and considered dangerous, slaves could not simply be set free. Feight continued: “to participate in all the privileges of civil society,” slaves needed moral instruction, a good education, and industrial habits to prepare them. Moreover, the numbers of slaves posed a threat to most state and local governments in the South; emancipation threatened the property rights of slaveholders who were afraid of the loss of their wealth and for their personal safety. Finally, continuous agitation in the churches created significant divisions within congregations and threatened the safety of the antislavery ministers.<sup>112</sup> Thus, if it were to be accomplished, the churches argued that emancipation had to come gradually; meanwhile in 1792, they could argue that at least their members treat slaves humanely.

The arguments of Rice and the churches did not originate with them. Larry E. Tise traced the slavery debate back to the early seventeenth century in the colonies as the need for labor began to shift from indentured servants to slaves and their number increased. According to Tise, the earliest known written opposition to slavery came from Samuel Sewall’s 1700 tract on *The Selling of Joseph: A Memorial*. Sewall, a justice of the Massachusetts provincial court, equated enslaving Africans with “manstealing.”

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<sup>110</sup> Feight, “James Blythe,” 18-19 and Harrison, *Antislavery Movement*, 21-23.

<sup>111</sup> Brown, *Political Beginnings*, 225.

<sup>112</sup> Feight, “James Blythe,” 20-21. Also Walter B. Posey, “The Slavery Question,” 314.

During the Revolutionary War, antislavery ideas appeared in public letters and pamphlets by the Philadelphia Quaker Anthony Benezet, the Presbyterian physician Benjamin Rush, and Englishmen Thomas Clarkson, Granville Sharpe, John Wesley, and Virginian Arthur Lee.<sup>113</sup> According to Christopher Leslie Brown, what writers like these were questioning was the “dubious justice” of holding Africans and their offspring in lifelong slavery. The argument for political liberty made them rethink chattel slavery. Where slavery was less critical to the economy, some were beginning to decry what they saw. The ownership, purchase, sale, and trading of slaves were “customs that troubled the conscience.”<sup>114</sup>

Rice said his conscience had been bothered by the injustice of slavery for forty years. It is quite possible that since his college training in New Jersey he had been aware of the above antislavery sentiments (and proslavery pamphlets) and used them in support of his speech. Coincidentally, there is a rhetorical echo in a 1790 pamphlet published by Anglican priest Devereaux Jarratt who held the proslavery argument that slavery was biblically sanctioned. He questioned “whether slavery in itself... be inconsistent with the dictates of reason and religion.”<sup>115</sup> In spite of some ministers using the Bible to justify slavery, the evolving position of the protestant churches in the 1790’s, as they struggled to make peace with slavery and slaveholders in their congregations, was similar to that advocated in David Rice’s speech. They considered slavery unjust and advocated some form of emancipation.<sup>116</sup>

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<sup>113</sup> Larry E. Tise, *Proslavery: A History of the Defense of Slavery in America, 1701-1840* (Athens: University of Georgia Press, 1987), 15-16.

<sup>114</sup> Christopher Leslie Brown, *Moral Capital: Foundations of British Abolitionism* (Chapel Hill: The University of North Carolina Press, 2006), 105.

<sup>115</sup> Tise, *Proslavery*, 37.

<sup>116</sup> The Catholic Church did not condemn slavery until late in the 19<sup>th</sup> Century and listed some antislavery pamphlets on its *Index of Forbidden Books* for questioning 1,400 years of moral

## NATIONAL AND FEDERAL ANTISLAVERY ARGUMENTS TO 1787

According to Matthew Mason, some Northern delegates to the Constitutional Convention in 1787 believed slavery would decline whether they did anything or not; many Northern Federalists in the ratification process believed that the 1808 clause allowing Congress to deliberate the abolition of slavery promised that slavery might soon die and that ending the trans-Atlantic slave trade would certainly finish slavery. To the contrary, Paul Finkelman argued that what Northerners assumed might have quieted their consciences, but the clause to end the importation of slaves in 1808 meant that slavery could not be ended by Congress before that time. Though Congress and the states were acting to regulate an end to the Atlantic slave trade, the South was given another twenty years to benefit from slavery and its expansion. Though having argued volubly against the fugitive slave law, Northerners were silent on its passage the next day after they succeeded in securing only a simple majority vote in congress to regulate commerce instead of a two-thirds vote. Thus commercial interests of both North and South prevented federal emancipation for at least twenty years.<sup>117</sup>

Though the United States Constitution may have tied the hands of House, Senate and President, it did not prevent the states from providing antislavery models for Kentucky to study in the making of its 1792 constitution. First, there was the 1787 decision of the Continental Congress to exclude slavery from the Northwest Territory. The Northwest Ordinance prohibited slavery in the future states of Ohio, Indiana, Illinois, Michigan, and Wisconsin. According to Kaminski, most of the settlers immigrating to the

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teaching that approved of slavery. See John Francis Maxwell, *Slavery and the Catholic Church* (Chicester: Barry Rose, 1975) on Heinonline, 2007, Nov. 25, 2010 <<http://heinonline.org>>.

<sup>117</sup> Mason, *Slavery and Politics*, 15. See also Paul Finkleman, "Regulating the African Slave Trade," *Civil War History* 54.4 (Dec. 2008), 392-397.

territory, first to Ohio, came from the Northeast and were predisposed to reject slavery personally and politically: Ohio, for instance, prohibited slavery in its 1802 constitution and Indiana in 1816.<sup>118</sup>

Between 1777 and 1784, the states of Vermont, Massachusetts, New Hampshire, Connecticut, Rhode Island and Pennsylvania either ended slavery, prohibited the importation of slaves, or adopted gradual emancipation schemes.<sup>119</sup> The Massachusetts judiciary, for instance, in a case brought before it in 1783 by a beaten runaway slave declared slavery “illegal and unconstitutional,” and abolished it, though slavery persisted for a short time afterwards.<sup>120</sup> To prevent the increase in numbers of slaves, even Virginia prohibited the importation of slaves in 1778 and permitted private emancipations after 1782—though, according to Kaminski, this law was hotly contested and nearly repealed because it made slaveowners feel guilty for not legally freeing their slaves and the law created large free African American communities.<sup>121</sup> These laws applied to Virginia’s western lands of Kentucky County—though the importation of slaves was not prohibited from within the state of Virginia. Pennsylvania, whose constitution and bill of rights was studied as a model for Kentucky by some members of the partisan party,<sup>122</sup> had initiated in 1780 the first “Act Providing for the Gradual Abolition of Slavery.” Pennsylvania prohibited the further importation of slaves and legalized the emancipation

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<sup>118</sup> Kaminski, *A Necessary Evil*, 39; for the states, see Hammond, *Slavery, Freedom*, 142-148.

<sup>119</sup> See Robert William Fogel and Stanley L. Engerman, *Time on the Cross: The Economics of American Negro Slavery* (Boston: Little, Brown and Company, 1974), 31-35 for a table and explanation showing a Chronology of Emancipation, 1772-1888 in the United States and worldwide.

<sup>120</sup> Mason, *Slavery and Politics*, 17.

<sup>121</sup> Kaminski, *A Necessary Evil*, 15.

<sup>122</sup> Barnhart, “Frontiersmen and Planters,” 34.



of slave children born after this date—after they reached twenty-eight years of age and servitude.<sup>123</sup>

In 1789 Benjamin Franklin (not unknown to Kentuckians, as President of the Pennsylvania Society for Promoting the Abolition of Slavery and the Relief of Free Negroes Unlawfully held in Bondage) wrote a public letter stating that “Slavery is such an atrocious debasement of human nature, that its very extirpation, if not performed with solicitous care, may sometimes open a source of serious evils.” His concern was with preventing freed slaves from becoming a police problem for the state by educating and training them “for the exercise and enjoyment of civil liberty.”<sup>124</sup> In 1790 Benjamin Franklin publically entreated the United States Congress to “countenance the restoration of liberty to those unhappy men, who alone, in this land of freedom, are degraded into perpetual bondage...” and to “devise means for removing this inconsistency from the character of the American people...” and to “promote mercy and justice towards this distressed race...”<sup>125</sup>

In spite of the clamorous protests to these acts and entreaties, at least another state heard Franklin’s voice or similar pleas. In 1791, Vermont, the companion state to be admitted to the Union with Kentucky, to balance the potential number of slave versus free states, declared in its first article of its Bill of Rights that “no male person born in this country, or brought from over sea, ought to be bound by law to serve any person as a servant, slave or apprentice after he arrives at the age of twenty-one years, nor female, in

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<sup>123</sup> Kaminski, *A Necessary Evil*, 13-14.

<sup>124</sup> George Washington Williams, “Slavery as a Political and Legal Problem, 1775-1800,” *History of the Negro Race in America* (1883) (New York: Bergman Publishers, 1968), I: 431.

<sup>125</sup> *Ibid.*, 432.

like manner, after she arrives at the age of twenty-one years...”<sup>126</sup> Vermont’s companion state Kentucky still had ten more months until its constitutional convention. There was still time for future delegates to study and deliberate these models of abolition or gradual emancipation.

The Kentucky delegates were not inactive during this time. In fact, four Kentuckians, all members of the Danville Political Club (discussed in the next section), tried to enlist the support of Virginian and future President James Madison in writing the Kentucky constitution. Involved at the time with the formation of a national “Republican Party” and the 1792 presidential elections, he declined though he was generous with his ideas about governance.<sup>127</sup> These men must have been familiar with Madison’s aversion to slavery as expressed at the Philadelphia constitutional convention in 1787 and in a number of letters exchanged with these men and various Virginian and national leaders. For instance, in support of Parker’s constitutional amendment to tax slave importation heavily if it could not be ended, James Madison said: “By expressing a national disapprobation to that trade, it is to be hoped we may destroy it, and to save ourselves from reproaches, and our prosperity from the imbecility ever attendant on a country filled with slaves.”<sup>128</sup> Madison acknowledged that holding men in bondage was unjust and that slavery should be abolished, but he was also a self-interested pragmatist who knew that “Great as the evil is, a dismemberment of the union would be worse.”<sup>129</sup>

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<sup>126</sup> Ibid., 436. Perhaps it was easy for freedom-loving Vermonters to rid themselves of slavery with only seventeen enslaved persons listed in the 1790 census compared to Kentucky’s slave population of 12,430.

<sup>127</sup> Harrison, *Kentucky’s Road*, 95. They were George Muter and John Brown who did not attend the tenth convention, and Caleb Wallace and George Nicholas who did.

<sup>128</sup> Williams, “Slavery,” 428.

<sup>129</sup> Kaminski, *A Necessary Evil*, 188 and 243. Madison was from the South, his plantation supported him, and his wealth was in slaves.

The national voices had provided a mixed message. In the constitutional convention and later state ratifications, there were members who ranged from being uncomfortable with slavery to reviling it. Some saw slavery as a contradiction in a new nation which promised rights for all. Northerners and some Southerners hoped slavery would die a natural death. If not, at least they could restrict the African slave trade and prevent more slaves being brought to their shores. Yet the African slave trade, the “carry trade”—Northern ships transported slaves and goods made by slaves—and slave labor itself were very profitable and difficult to legislate away.

#### **LOCAL VOICES: PARTISANS, YEOMAN FARMERS, *KENTUCKY GAZETTE***

Though the federal government seemed to have failed in eliminating slavery, and David Rice’s and the churches’ arguments against slavery were still small voices trying to influence the hearts and minds of Americans, there were others in Kentucky who wanted to be heard. Patricia Watlington argued that there was a political philosophy held by a number of men whom she regarded as a “party” which she labeled the “partisans.”<sup>130</sup> Initially, the partisans were men who represented the small farmer or the landless tenant farmer in opposition to the large landowner or plantation owner. In the separation from Virginia and the establishment of Kentucky as a state, they hoped that uncultivated land could be redistributed because huge tracts had been granted to military “colonels” or acquired by speculators under the old title laws of Virginia. If these were voided because they were not developed, then the common man could acquire more land. Not possessing

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<sup>130</sup> Watlington, *The Partisan Spirit* named the three political “parties” as partisans, court party and county party; partisans were similar to frontiersmen in Barnhart, “Frontiersmen and Planters.” Further explanation can be found in Chapter I, section 2.

large tracts of land, the majority of partisans were not slaveholders or held one or two slaves at most. As a party, they favored immediate or gradual emancipation of slaves without compensation to slave owners.<sup>131</sup> They played a significant role in the nine conventions leading to the tenth and the vote in April 1792.

The last white group to be affected by African slavery was probably the most discriminated against after the enslaved themselves. The best land had been taken by the planters. What was left was not cheap enough to buy but had to be farmed in tenancy. They had no education or health care. They had to join the established church; they had to pay taxes, yet they could not vote. Punishments for infractions were severe. This group consisted of the yeoman farmers. They were poorer, less educated, opinionated, yet more oriented to a democracy of and by the people because they wanted their voices to be heard. Whether aligned with the partisans or not, they worked the land and owned no or very few slaves. They were opposed to the privileges of the well-to-do, educated, aristocratic planter class who had secured large estates and profited from the labor of many slaves.<sup>132</sup>

The problem for yeoman farmers trying to obtain a competence was the presence of unpaid or cheap slave labor. According to Aron, “a substantial proportion of this nonslaveholding majority disliked slavery...”<sup>133</sup> If before 1799, as Harrison wrote, they had pioneered the land or had been given land as a compensation for military service, they were entitled to purchase or receive warrants for 400 acres with a 1,000 acre pre-emption. But they had to have built a cabin and raised a crop to take possession. One family might not be able to do that, but a plantation owner could send his slaves:

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<sup>131</sup> Watlington, *The Partisan Spirit*, 225-6.

<sup>132</sup> Barnhart, “Frontiersmen and Planters,” 21-23.

<sup>133</sup> Aron, *How the West*, 91.

aristocratic Virginia planter John Breckinridge had sent twenty slaves to secure his thousands of acres of land.<sup>134</sup> Unfortunately, for the majority of settlers, the best land had been taken up by planters who used slaves to work it. By the early 1790's, according to Harrison's sources, "a majority of Kentucky males probably did not own land."<sup>135</sup>

With the price of land increasing and good land already purchased, new arrivals often had to become tenant farmers, renting long enough to support their families and earn enough to buy the land they worked or improved—if they could. However, they could not compete with the slave-produced cash crops of tobacco, hemp, and surplus food staples, such as corn, wheat, rye, hops. New arrivals needed cheap rents and perhaps a first year or two of deferred payments. Planters knew they could make more money from the same land if they had slaves work it.<sup>136</sup> Also, if a yeoman farmer failed to make payments on his land or support his family, the recourse was to sell land which planters readily bought up and replace the labor of the hapless farmers with that of slaves. Therefore, according to Pratt Byrd, slavery increased on the plantations with control of slaves in the hands of relatively few people: only 17% of families owned slaves in 1790. The competition with slaves reduced the value of or return from the work of the yeoman farmers, and, at the same time, angered them by artificially elevating slaveholders to positions of social prominence.<sup>137</sup> Thus, the yeoman farmer opposed slavery on the basis of economics and equality.

Rice lamented in his speech that yeoman farmers felt the economic and aristocratic inferiority of a man without slaves:

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<sup>134</sup> Ibid., 92.

<sup>135</sup> Harrison, *Kentucky's Road*, 11-12.

<sup>136</sup> Aron, *How the West*, 91.

<sup>137</sup> Byrd, Part I: 191-192.

A man, who has no slaves, cannot live easy and contented in the midst of those who possess them in numbers, He is treated with neglect, and often with contempt... his children are looked upon and treated by theirs as underlings. These things are not easy to bear... he will not long abide... When he removes, his place is filled up with slaves. Thus this country will spew out its white inhabitants; and be peopled with slave-holders, their slaves, and [overseers].<sup>138</sup>

Son of one of the first settlers, Daniel Drake could verify this statement. Off to visit a family of eight, he found only one remaining on a small farm. Drake wrote that “the loss of white population... has occurred in various parts of Kentucky, and must be referred to as an influence of slavery...” For him, new investments in land and Negroes in a slave state caused the land to pass from the many to the few: “slaves take the place of freemen, ‘negro quarters’ replace the humble habitations of happy families.” Hardworking fathers and hired men were being replaced by overseers and slaves.<sup>139</sup> As a consequence, according to Craig Thompson Friend, by 1800 only 49.2% of Kentucky’s “hardworking fathers” owned land. The propertyless 50.2%, especially the young, were faced with the option of being tenant farmers or urban workers in competition with slave laborers whom they were also called out on night patrols to police.<sup>140</sup>

Yeoman farmers and partisans were opposed to slavery; their sentiments found their way into public discourse. According to Harrison, after seven years as the conventions moved toward statehood, there was “increased attention” to the discussions about what form the constitution would take. He speculated that there was much public controversy heard in the taverns and appearing in private letters, but contemporary records revealed “little about the constitutional discussions”—except the letters in the

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<sup>138</sup> Rice, *Slavery*, 16.

<sup>139</sup> All quotes from Drake, *Pioneer Life*, 182.

<sup>140</sup> Craig Thompson Friend, *Along the Maysville Road: The Early American Republic in the Trans-Appalachian West* (Knoxville: University of Tennessee Press, 2005) 129.

*Kentucky Gazette*.<sup>141</sup> In the *Gazette* there was a smattering of comments from 1788 through 1792 that indicated opposition to slavery. In 1788, for instance, an anonymous person submitted a poem wondering when emancipation would come; it ended with the lines “Where still the African complains/ And mourns his yet unbroken chains.”<sup>142</sup> Since their authorship was disguised by pen names, such as “Little Brutus,” “Brutus Senior,” “Philip Philips,” and “Will Wisp,” it is difficult to know the political party of the letter-writer. Well written and argued, the tone of some of the letters placed them in the partisan rank because the issue of concern was liberty for the enslaved and, especially, for themselves so that they would be fully represented in government where their voices would be heard and their votes counted.

Since liberty was a natural right, some thought it was logical and just to extend this right to the black man and to abolish slavery. For instance, in March, 1788, two years prior to the convention, in a heart-felt protest against extending the African slave trade for twenty more years, “Republicus” questioned what had the “Unhappy africans” ever done to deserve “destruction, captivity, and death” in the “infamous” transatlantic slave trade and to be deprived of the “greatest of all blessings, liberty”?<sup>143</sup> This plea and others would have been read and shared by the growing number of subscribers to John Bradford’s *Kentucky Gazette*, published weekly in Lexington from August 11, 1787. In addition to local news and advertisements (many for runaway slaves) and months-old

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<sup>141</sup> Harrison, *Kentucky’s Road*, 97. Watlington, *The Partisan Spirit*, 214: she thought that the controversy over slavery had been covered in the letters printed in the *Kentucky Gazette* between July 30 and September 10, 1791. However, these issues have disappeared. I read issues of the *Kentucky Gazette* on microfilm at the Harvard’s Widener Library and via interlibrary loan from University of Michigan and can verify that the period she mentioned was missing.

<sup>142</sup> William Elsey Connelley and E. M. Coulter, *History of Kentucky*, 5 Vols., ed. Charles Kerr (Chicago: The American Historical Society, 1922), I:303.

<sup>143</sup> “Republicus,” *Kentucky Gazette*, March 1, 1788.

national and international news, Bradford printed letters about local issues. He printed them without comment and let the writers and readers determine for themselves who the writers were as they engaged in public debate.<sup>144</sup>

In addition to several proslavery sentiments, other correspondents expressed thoughtful or emotional arguments against slavery. For instance, “Philip Phillips” decried the desperate plight of the never-ending drudgery of slaves, “groaning” under the most abject conditions of field labor—for life—which led them to question Divine Providence for this injustice. He knew that immediate emancipation might lead to the situation where “many worthy citizens might be reduced to beggary,” but gradual emancipation—for instance educating a black child to age fifteen and then having him serve for ten years—would enable owners to “receive considerable benefit” and eventually end slavery.<sup>145</sup>

“Brutus Senior” railed against “Little Brutus” as “an enemy to the rights of human nature.” He refuted the argument that slaveholders had a right to their property because such property had been illegally acquired or acquired by force. “Brutus Senior” admitted that as an “unavoidable consequence of slavery,” blacks had been reduced, degraded, and made destitute. Finally, he disputed the former’s assumptions that ending slavery would have dire consequences for Kentucky’s economy.<sup>146</sup> “H.S.B.M.” argued for a “spirit of liberty” to include black men in the proposed Bill of Rights for the proposed constitution or there will be “no prospect of even a gradual emancipation of the blacks...”<sup>147</sup>

One final public expression against slavery is worth noting, especially since it came from Watlington’s “articulate center” of court and county party members. While

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<sup>144</sup> Clark, *A History*, 334-337.

<sup>145</sup> “Philip Philips,” *Kentucky Gazette*, November 26 and December 3, 1791.

<sup>146</sup> Preceding quotes from “Brutus Senior,” *Kentucky Gazette*, March 10, 1792.

<sup>147</sup> “H.S.B.M.,” *Kentucky Gazette*, February 25, 1792.



waiting for a quorum in 1786 for the Fourth Convention, delayed by persistent Indian raids, some of the members of the convention formed a Political Club to meet weekly and address important issues of the day.<sup>148</sup> Thomas Speed, the grandson of one of the members of the same name, noted in the records he found that members revealed their views on a slavery question. As the clause of the United States Constitution extending the importation of slaves to the year 1808 was being discussed in Philadelphia, the club, after heated debate, resolved to recommend expunging the clause so that Congress could legislate against “the odious business” at any time and as soon as possible.<sup>149</sup>

Another issue that concerned the Virginia planters who were members of the club was the introduction of tobacco as a main crop. Tobacco required extensive and intensive labor which would have led to the increase of slaves while depleting the soil. According to Asa E. Martin, the planters had misgivings about relying on this as a main staple of agriculture in comparison to the free labor and diversity of crops that made agriculture more profitable above the Ohio River. Moreover, he wrote that they “must have been familiar” with Jefferson’s 1782 *Notes on the State of Virginia* in which “he deplored the disastrous effect of slavery both on both men and soil.”<sup>150</sup>

The connection of this Political Club in the forming of opinions that led to the articles of Kentucky’s constitution is important when one considers that eleven of these members participated in at least one of ten conventions, and four of them participated in the vote in April 1792.<sup>151</sup> The thirty members of this club constituted the leadership of

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<sup>148</sup> Harrison, *Kentucky’s Road*, 44-45.

<sup>149</sup> Thomas Speed, *The Political Club, Danville, Kentucky, 1786-1790* (Louisville, KY: Filson Club Publication #9, 1894), 151.

<sup>150</sup> Martin, *Anti-slavery Movement*, 10.

<sup>151</sup> Ann Price Combs, "Notes on the Political Club of Danville and Its Members." *Filson Club Historical Quarterly* 35 (October, 1961), 337-338

Kentucky. They were, according to the grandson writing at the centennial, “men of high type intellectually,” of “dignified refinement and courtesy of demeanor,” “people of ability and substance,” “people of the best position,” many of whom “had studied law under the best advantages,” and men who had “reaped a rich reward in the rapid advancement in value of the large tracts of land they acquired.” These men would have been able to provide the intellectual, moral, and political leadership to end slavery. Having “received a good education” and possessing “accomplishments belonging to the best colonial society,”<sup>152</sup> they would have been able to follow the logic of David Rice’s argument that slavery was, indeed, inconsistent with justice and good policy. Had they not—all of them slaveholders—taken the first step, at least of opposing “the odious business” of the African slave trade?

Moreover, in Kentucky, “the religious sentiment of the entire population was adverse to a perpetuation of the institution of slavery, and political inclinations were in the same direction,” wrote historian John Mason Brown, another grandson of a member of the Danville Political Club. According to Brown, slavery had not been discussed as an issue while Kentucky was under the laws of Virginia: “There was little division of public opinion, and no exhibition of angry differences.” Brown confirmed that the Danville Political Club “concurred in the policy of restricting, as far as possible, the importation of slaves from other States, and in the advisability of providing, as soon as possible, a system of emancipation.”<sup>153</sup> Therefore, as the county of Kentucky lobbied to separate from Virginia, heated discussions could be heard in both private and public spheres.

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<sup>152</sup> Preceding quotes from Speed, *The Political Club*, 39-40.

<sup>153</sup> Brown, *The Political Beginnings*, 223. His grandfather, John Brown, was implicated in the Spanish conspiracy but served as a first Kentucky senator and later governor. John Mason Brown was concerned with erasing the stain on his grandfather’s reputation. He was also

In conclusion, it is clear that antislavery voices were growing louder and more convincing by 1792. The earlier objections to the abolition of the slave trade had re-focused on bondage within the United States and its expansion to the new territories and a new state like Kentucky. In Kentucky some of the clergy, the yeoman farmers, the partisans, and some members of the “articulate center” were agitating against slavery. Northern states were moving to curtail or abolish slavery. An evolving antislavery sentiment seemed to promise that emancipation would be only a matter of time—maybe not immediately and “unconditionally” but soon, perhaps nationally in sixteen more years after the end of the international slave trade (1808). In April, 1792, with logic, rhetoric, and emotion, David Rice had effectively summarized the issues of America’s “peculiar institution.” He put a human face on African Americans. He lamented their sufferings. He tried to assuage the fears of the slaveholders who would lose some of their wealth. He appealed to their consciences. Finally, he presented a plan, a way to accomplish emancipation, something that fellow Virginian Thomas Jefferson had hoped for.<sup>154</sup> When David Rice took his seat after his speech, emancipation was up to the convention.

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revisionist in tone when it came to discussing Kentuckians’ involvement in slavery, praising David Rice and calling Nicholas’s proslavery result politically unwise. See 231.

<sup>154</sup> Jefferson, “Manners,” *Notes on the State of Virginia* (1781-1782), Electronic Text Center, University of Virginia Library, query 18: “We must be contented to hope they will force their way into every one’s mind. I think a change already perceptible, since the origin of the present revolution. The spirit of the master is abating, that of the slave rising from the dust, his condition mollifying, the way I hope preparing, under the auspices of heaven, for a total emancipation, and that this is disposed, in the order of events, to be with the consent of the masters, rather than by their extirpation.”

### CHAPTER THREE: PROSLAVERY POSITION AND GEORGE NICHOLAS

This convention was deputed by, to make a government for, the free men of this country; a proposition is made to them, that they should on the constitution they are to form declare that a number of persons who by the laws of Virginia were slaves, who have been bought as such under the sanction of those laws, and who were expressly excluded from voting for the members of this convention, are entitled to the privileges of freemen, and that they shall be discharged from slavery without any compensations being made to their present owners. George Nicholas <sup>155</sup>

Though rejected when it made its bid to enter the Union independently and directed to apply through Virginia, Kentucky was eventually admitted to the Union but lacked a constitution. The established eastern states had been reluctant to admit Kentucky because of the supposition that it would enter as a slave state with two more proslavery Southern senators. However, when George Washington strongly recommended in his annual message to congress that Kentucky be admitted with Vermont's application, Congress agreed on February 4, 1791, to admit Kentucky. According to a popular refrain, the two new states would balance each other "And Neither South nor North prevails."<sup>156</sup> Yet it had not been established as a fact that Kentucky would be proslavery.

The proslavery position was articulated by George Nicholas (1754?-1799) whom historians have generally agreed was "the person most responsible for the first Constitution of Kentucky in 1792."<sup>157</sup> By way of introduction to Nicholas, Huntley Dupre referred to a quote from Collins's *History of Kentucky* that "his powers of

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<sup>155</sup> Nicholas, "Slaves," 1.

<sup>156</sup> Harrison, *Kentucky's Road*, 90.

<sup>157</sup> Huntley Dupre, "The Political Ideas of George Nicholas." *Register of the Kentucky Historical Society* 39 (July 1941), 201. See also Harrison and Klotter, *A New History*, 61: George Nicholas had earned himself the soubriquet "Father of the First Constitution."

argumentation were of the highest order, and his knowledge of the laws and institutions of his country placed him in the first rank of the distinguished men by whose wisdom and patriotism they were established...”<sup>158</sup> Nicholas, of the wealthy and influential Carter family of Virginia and a resident of Kentucky for only three years before the convention, had already served as a lawyer and influential member of the Virginia House of Assembly and Virginia’s convention in 1788 to ratify the U.S. Constitution.<sup>159</sup> He agreed philosophically with his political allies and friends, primarily James Madison and Thomas Jefferson, that objections to slavery were secondary to the formation of a strong federal union.<sup>160</sup> Harrison argued that Nicholas had played a major role in securing the ratification.<sup>161</sup> In Kentucky, Nicholas was a well respected member of the “articulate center”—that is, the court party of lawyers, speculators and judges—and was elected twice to represent Mercer County at the tenth convention. George Nicholas would become the first Kentucky attorney-general. By 1792 he owned at least 20,000 acres of land and forty-six slaves.<sup>162</sup>

#### **GEORGE NICHOLAS’S COUNTER-ARGUMENT AND REASONS**

The issue of slavery would probably not have been on the agenda for so many days if it had not been attacked by David Rice. Slavery was an institution that had been well established for over a century in Virginia. Paul Finkelman reported that he could find “no evidence that any substantial number of white Virginians opposed slavery” up to

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<sup>158</sup> Dupre, “The Political Ideas,” 201. Reference to Richard H. Collins who revised Louis Collins’ *History of Kentucky* (1847), II:664. See works Cited

<sup>159</sup> “Nicholas, George,” *American National Biography Online*, 24 Aug. 2010  
<<http://www.anb.org>>.

<sup>160</sup> Dupre, “The Political Ideas,” 202.

<sup>161</sup> Harrison, *Kentucky’s Road*, 74.

<sup>162</sup> Byrd, Part I: 201-202.

the time of the Declaration of Independence.<sup>163</sup> John Mason Brown noted that since Kentucky was a part of Virginia there was little discussion and no disagreement on the issue of slavery and “no exhibition of angry differences” prior to the convention.<sup>164</sup> Robert and Katherine Brown analyzed slavery during this period in Virginia and concluded that it was not an issue of internal conflict before the Revolution. The vast majority of Virginians accepted slavery for its benefits, even the few who opposed it: “Slavery was profitable; it enabled a man to live with a minimum of physical labor... The deeds, wills, and tax lists confirm the fact that most men, including former servants and apprentices, small planters, artisans, and overseers, desired to own slaves.”<sup>165</sup> However, a serious question about slavery coming from newly minted abolitionists, especially in the context of a written state constitution, which would guide the legislative process indefinitely, required a response or rebuttal. Rice had asked the question whether slavery was inconsistent with justice and good policy in a prepared speech. Not having pre-published a response, Nicholas spoke from notes that generally ignored Rice’s points.

For George Nicholas, the right to the enjoyment of one’s own private property was both just and good policy. That was the essence of his argument. Though not a point by point counter or refutation, Nicholas’s handwritten notes logically presented talking points which were found in his estate papers but with no date associated with them; however, since there were echoes of rebuttal of Rice’s plea for “justice and good policy,”

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<sup>163</sup> Paul Finkelman, “Regulating the African Slave Trade,” *Civil War History* 54.4 (Dec. 2008), 382.

<sup>164</sup> Brown, *Political Beginnings*, 223; see also Jeffrey Brooke Allen, “The Origins of Proslavery Thought in Kentucky, 1792-1799,” *Register of the Kentucky Historical Society* 77.2 (Spring 1979), 77: In Kentucky “there was no point in debating the merits of an institution which seemed fixed in perpetuity by the laws of” Virginia.

<sup>165</sup> Robert Brown and Katherine Brown, *Virginia 1705-1786: Democracy or Aristocracy?* (East Lansing: Michigan State University Press, 1964), 77.

they were probably used that week of the convention.<sup>166</sup> From the beginning he dismissed Rice's moral and religious arguments by stating that it was not necessary to debate the origin or rectitude of slavery because it had existed from the earliest periods of history and was sanctioned by God in the laws He prescribed for his chosen people: Slavery was "no where expressly forbidden."<sup>167</sup>

For Nicholas, the lawyer, the issue before the convention was not moral but legal, not religious but civil. He questioned whether the convention had the right to emancipate slaves, duly brought in under the laws of Virginia, and to do so without compensation for their owners. The most important point he sought to convey was the right to property. The spirit of the 4<sup>th</sup> Enabling Law of Virginia, which granted the County of Kentucky the right to separate and become a state, promised to secure existing land and property laws even in the act of changing governments, which Nicholas asserted were formed for the protection of property: "If the rights of property are not of the nature of those we receive from our creator, yet the security of them is among the great objects of civil society."<sup>168</sup>

Continuing with a new point in each of his following notes, he reasoned that if a law had not been passed by general consent of the entire nation—that is, since the Constitution of the United States had not emancipated slaves nor had the State of Virginia—then this smaller body of representatives could not pass a law to deprive a person of his property [in slaves] without compensation, for such an action would limit his liberty. He claimed that "It is a settled principle in all free governments, that the

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<sup>166</sup> Nicholas, "Slaves." These notes are one of a large number of his papers, speeches, letters and pamphlets written to support the work of the first two conventions. Copies can be ordered from the Special Collections Research Center. For a list of notes on other issues spoken to during the convention, see Connelley and Coulter, *History of Kentucky*, I: 284.

<sup>167</sup> *Ibid.*, 1.

<sup>168</sup> *Ibid.*, 2.

nation has no right to deprive an individual of his property unless it is essentially necessary to the public good. And that only after agreed compensation...” He warned emphatically, if not fallaciously, that if the convention were to destroy the right to property in this instance, it would open wide the door through which tyranny would enter someday.<sup>169</sup>

Slaves were considered as chattel property and had always been under Virginia’s laws. As property, Nicholas reminded the members who were slaveholders, slaves were seen “as the fruit of many years of industry, as the reward of labour, sweat and toil; as the widow’s dowry, and the children’s portion, and as the means of making old age a scene of rest.” The property rights of the owner were “too sacred to be sported with.” Therefore, the government of Kentucky could not question the laws of Virginia that had, since 1705, declared slaves to be property that can be bought and sold.<sup>170</sup> Kentucky could not say that Virginia had been mistaken and had no power to make Africans slaves. Where was the justice in this? Owners relied on Virginia’s laws and exchanged money to purchase their property, or were gifted such property by parents, for instance, under those laws. If it were to be decided that they were wrong to buy and sell slaves, then the loss ought to be sustained by the state. If this property were “to be liberated on a principle of right,” then as a principle of policy, government “must... pay for it.”<sup>171</sup>

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<sup>169</sup> Ibid., 2-3.

<sup>170</sup> As quoted from William Walter Henig, ed., *The Statues at Large; Being a Collection of all the Laws of Virginia* (Richmond: 1809-1823), II:288 by Warren M. Billings, “The Law of Servants and Slaves in Seventeenth-Century Virginia,” *The Virginia Magazine of History and Biography* 99.1 (Jan. 1991), 61: “All negro, mulatto, and Indian slaves, in all courts of judicature, and other places within this dominion, shall be held, taken and adjudged, to be real estate and shall descend unto the heirs and widows of persons departing this life, according to the manner and custom of land of inheritance, held in fee simple.”

<sup>171</sup> Nicholas, “Slaves,” 3.



Taking a different tack in his next note, Nicholas argued that a government had to take steps to insure that any minority was not oppressed by the majority: “It is of great importance in a republic, not only to guard the society against the oppression of its [sic] rulers, but also to guard one part of the society against the injustice of the other part.” Since only a minority owned slaves, it would be “oppressed by act of the majority who, having no property of that kind,” would have no “fellow feeling” about the minority’s right to property in this case. A small part of the citizens would suffer injustice at the hands of the majority which would derive a benefit (achieving a public good) at the expense of the owners of slaves—and at no expense to themselves. If this action were allowed to proceed, then the majority would feel empowered—“whenever [it] can fall on a plan”—to make any minority pay for any future public benefit. Since the majority one day might find itself the minority in another case, “every citizen [should], therefore, be equally interested in preventing such measures, otherwise our government and laws instead of being founded in justice, will be founded in faction and instead of being a republic of free citizens, we shall be alternately tyrants and slaves.”<sup>172</sup>

Nicholas argued strongly that “they,” the antislavery faction, proposed that emancipation take place by degrees. But government had no more right to take away anyone’s property now or twenty years from now. In twenty years, for instance, slaves born after the decree would be discharged from service after having been trained and educated, but today’s slaves would be too old and have to be supported by their owners or turned out destitute. Slaveholders would have to bear the burden. Where was the justice in that? Moreover, those who wanted emancipation now were “utterly opposed” to paying for it. They wanted to practice philanthropy and generosity “at another man’s

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<sup>172</sup> Ibid., 4.

expense.” This plan, he emphasized, was “an insult to our understanding” because “they know they dare not emancipate at once.” Reflecting an angry tone but softening the handwritten note with a strike out, he continued: “The friends of emancipation deceive ~~themselves and~~ the world, if it suppose they are actuated by principles of justice...” Finally, if they were “in earnest,” they would emancipate their own slaves “now.”<sup>173</sup>

Continuing to directly counter Rice and the antislavery faction, Nicholas said those who proposed emancipation did so because they supported the right of personal liberty over property, saying that liberty was “derived from our great creator, the other not.” However, personal liberty in terms of freedom was not the issue here. That was a natural right. Governments could only compromise on legal rights among men who entered into a civil compact. Slaves were not party to a civil contract and, therefore, had no rights under it. They were considered property prior to the existence of this new government and would continue to be considered property. Nicholas concluded that “one of the principle ends of the government is to secure the property of those who enter into it. Therefore, the right to this property ought to be secured and not destroyed by the government.”<sup>174</sup>

Nicholas did not direct all his attention to the legal and rational. Arguing post hoc ergo propter hoc, Nicholas lowered the level of his argument to speak to the white man’s worst fears: consider, he said, the consequences of enabling all *freed* men the right to vote and elect their governments. There were more slaves in South Carolina than whites; what would probably happen if they elected the government? Would they, as he referred to an incident described by Montesquieu, demand “so improper a proposition” as “the

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<sup>173</sup> Ibid., 5.

<sup>174</sup> Ibid., 6.

right of lying” with the daughters of the free born? This convention was acting for the *free* men of this country to form a government “to secure their liberties and protect their property.”<sup>175</sup> Continuing with Montesquieu for support, Nicholas said that the initiators of the proposal to free the Negroes were doing so as a matter of conscience; however, conscience was not “a proper subject for government.” Montesquieu, he quoted, cautioned men “not to decide by divine law what should be decided by human law.” That is, divine law governed liberty; human law or civil law governed private property.<sup>176</sup>

Had David Rice been in attendance, he could have engaged Nicholas in a debate about what more Montesquieu had had to say—especially about slavery. For instance, Montesquieu had argued that “the state of slavery is in its own nature bad. It is neither useful to the master nor to the slave; not to the slave, because he can do nothing through a motive of virtue; nor to the master, because by having an unlimited authority over his slaves he insensibly accustoms himself to the want of all moral virtues, and thence becomes fierce, hasty, severe, choleric, voluptuous, and cruel... Further on, Montesquieu argued that “in democracies, where they are all upon equality; and in aristocracies, where the laws ought to use their utmost endeavours to procure as great an equality as the nature of the government will permit, slavery is contrary to the spirit of the constitution: it only contributes to give a power and luxury to the citizens which they ought not to have.”<sup>177</sup> Including a number of warnings to treat slaves humanely in all aspects of their lives in

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<sup>175</sup> Ibid., 7. Underlining in the handwritten notes.

<sup>176</sup> Ibid., 8-9.

<sup>177</sup> Nicholas had selected his quote from Montesquieu at Book 26:2 (“We should not to decide by divine law what should be decided by human law...”), but skipped over the eighteen chapters of a previous Book 15, titled “In What Manner the Laws of Civil Slavery Related to the Nature of Climate,” in *The Spirit of the Laws* (1752). Furthermore, Book 15, Chapter 16 listed “Regulations between Masters and Slaves.” For all quotations in this paragraph see Montesquieu, Charles de Secondat, Baron de, “Montesquieu: *The Spirit of the Laws: Book 15*” (1752), October 12, 2010 <<http://www.constitution.org>>.

bondage, Montesquieu's philosophy about slavery would have supported David Rice's position exactly. However, neither Rice nor Nicholas stood before each other in debate.

Perhaps in the spirit of treating slaves humanely, Nicholas asked how would the Negroes themselves be affected in this country? If they were freed, it was likely they would have to be sent out. Then they might be [sold as] slaves in some other part of the world. It was doubtful this situation would be to their advantage. It would contribute to their unhappiness if they were to be separated from their connections here in Kentucky.<sup>178</sup> And the people of this country would be equally unhappy because they would no longer be assured of future prosperity, whether compensated or not, for the loss of their slaves. Moreover, if owners were to be compensated, it would be done by an unhappy rise in taxes for all—and subsequent loss of tax revenue from slaves.<sup>179</sup>

His next point was that “slaves are useful in a country where free labours cannot be had in sufficient number; and are prejudicial to a country when they are so numerous as to be a means of excluding free labourers.”<sup>180</sup> He argued that at this time in Kentucky, the price of labor was double that of other parts of America, making it difficult for farmers to get ahead or improve their farms by hiring. As for the second part, the

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<sup>178</sup> Ironically, Kentucky would become a market for slaves sold south, with families traumatically dismembered.

<sup>179</sup> Nicholas, “Slaves,” 10. Taxes on slaves were controversial and eventually lowered by legislature in 1798 to 2 shillings per working slave. This was equal to the 2 shillings on 100 acres of land. See Marshall, *The History of Kentucky*, II:18. In 1790 Virginia six shillings was estimated to be worth one silver dollar which was had inflated to \$463 in 2009 according to the “unskilled wage index.” Thus, a two shilling tax on the potential earnings per slave might have cost the slaveholder \$154.67 (in 2009 dollars). See “Part III: The United States Currency in 1790,” II: 20-21, July 2007, Oct. 7, 2010 <<http://www.thehistorybox.com>> and “Seven Ways to Compute the Relative Value of a US Dollar Amount 1774 to Present,” 2010, Oct. 7, 2010 <<http://measuringworth.com>>. If, according to Byrd I: 191 in Chapter V, an average slave cost \$150 in 1790 Kentucky, the earnings of one working slave for life including its issue would be worth \$69,450 today. If the male slave were “production worker” quality (\$1,190), his earning value would increase 2.6 times to \$178,500.

<sup>180</sup> *Ibid.*, 10-11.

mediocrity of landowners' fortunes and the low price of their commodities would prohibit importation of relatively expensive slaves in large numbers. Nicholas did not think Kentuckians would have anything to worry about huge concentrations of slaves like the citizens of other southern states.

Another major worry was that abolishing slavery would discourage immigration to Kentucky except from the poorest of the northern states. Southerners who depended upon slaves for their labor would not come to a state that prohibited slavery; current inhabitants would leave for North Carolina, for instance, where slavery was not prohibited. People in the northern states who objected to competing with slave labor would move above the Ohio River. If immigration were stopped, then of what value would Kentucky land be to its owners? Slaves helped improve the land, making it more valuable to sell to those who would want to settle in Kentucky.<sup>181</sup>

Before ending his discourse, Nicholas spoke to the significant fear of what a free black man might do. He warned that if slaves were emancipated, "they will debase us as a people." As they acquired wealth, they would "bring about intermarriages." Nothing but their "disabilities"—that is, a lack of wealth, education, property, the vote—have prevented the mixture. "Remove them, and none can say where it will stop."<sup>182</sup> Fear of being overwhelmed by a rapidly growing, emancipated population and fears of slave insurrections plagued Southern slaveholders.<sup>183</sup> Perhaps the convention, listening to

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<sup>181</sup> Ibid., 12.

<sup>182</sup> Ibid., 12.

<sup>183</sup> Rothman, *Slave Country*, 3. See also Thomas Jefferson, "Manners," 289 where he expressed his fears that emancipation may not come about except by the "extirpation" of the masters.

Nicholas, would have reflected fearfully on what was happening in Saint Domingue since the preceding summer, 1791, when half a million freemen and slaves revolted.<sup>184</sup>

Switching to a higher plain, he ended his talking points by citing a number of thoughtful and supporting quotes from various sources; these would have been quite familiar to the majority of well-read members of the convention.<sup>185</sup> First, he quoted Dr. Richard Price: “all legitimate government consists of equal laws made with common consent”; then Jean Jacques Rousseau: principles of equity that “flow from all to be applicable to all.” He agreed with Thomas Paine who thought the public should avoid the despotic principle of one group ruling over the interests of others: “That what a man has is his own, and that the government itself cannot take it from him.” Finally, referring to one of the highest legal authorities, Nicholas quoted from Sir William Blackstone, eminent English jurist who wrote the widely read *Commentaries on the Laws of England* (1769): “the third absolute right inherent in every Englishman is that of property...” and its free use and enjoyment. For this principle everyone has surrendered a little bit of his personal liberty. Though there are situations where property must be utilized or obtained for the public good, it cannot be done without the consent of the owner who must be given “a full indemnification and equivalent for the injury thereby sustained.”

In summation, George Nicholas instructed the members of the convention in the enabling laws of Virginia that preserved land and property rights in Kentucky, in the

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<sup>184</sup> Jordan, *White Over Black*, 376. Fears of the massive rebellion in Saint Domingue were reported by returning ship masters in U.S. newspapers as early as October, for instance in *The Pennsylvania Gazette*, 12 October 1791. “Slavery and the Haitian Revolution,” *Liberty, Equality, Fraternity: Exploring the French Revolution*, 28 Oct. 2010 < <http://chnm.gmu.edu/revolution/chap8b.html>>. See also Steven Deyle, *Carry Me Back: The Domestic Slave Trade in American Life* (New York: Oxford University Press, 2005), 19: the rebellion terrified the entire United States.

<sup>185</sup> All quotes from Nicholas, “Slaves,” 12-14.

history of slaves as property, and the nature of the law of property, the obligation of a government to be just in its treatment of all citizens, and the good policy of compensating owners of slaves. He warned them of the consequences of freeing slaves, primarily of the white fears of intermarriage.<sup>186</sup> Essentially, he argued that there must be compensation for the owners of slaves if slaves were to be emancipated as a matter of constitutional law.

Years later in 1799, before the second constitutional convention, George Nicholas defended his position on property and slavery by affirming that he had been consistent over the years in what he believed. In a letter to the readers of the *Kentucky Gazette*, Nicholas explained that he had tried to counter the attack on slaves as property and insisted that the evil of slavery could be done away with—but that it could not “be justly removed by the means of laws acting compulsorily on the owners, without the State’s making the owners a real and just compensation...” Like Thomas Jefferson, Nicholas wrote that he had not tried to justify slavery, nor had he opposed emancipation:

I inherited a number of slaves from my father, and I have since purchased others, at their particular request. I have sold none, but such as were of a temper that could not be governed without severity... I never did approve of slavery, but I have thought that the removing of it in a proper manner would be attended with great difficulties; and that the doing of it in an improper manner, would produce greater evil to the country, than it would remove.<sup>187</sup>

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<sup>186</sup> Rice had warned that it was too late to worry about miscegenation because it was already happening with white masters breeding their own mulatto children on black female slaves: see expunged section of his speech in Chapter IV. White men obviously did not think it improper to take black women; however, intermarriage was probably not on their minds. Nicholas used the word intermarriage. Why? To distinguish or legitimize black desires for white women as different from white men lasciviously breeding them? Maybe free white citizens would want to intermarry with freed black citizens—if they had the civil opportunity to do so?

<sup>187</sup> Dupre, “The Political Ideas,” 210 quoted from the letter to the *Kentucky Gazette* of March 30, 1799, which Nicholas addressed “To The Freemen of Kentucky.” Further to “improper manner”: see Jordan, *White Over Black*, 435. Jordan wrote that Jefferson hesitated to publish his

Though Nicholas may not have approved of slavery and though, from his own words, he might have been a good master, he sidestepped the moral issue of slavery as presented by David Rice. He also ignored Rice's plan of gradual emancipation. As a practical politician, he hammered down the law of property on which men relied when purchasing slaves. If the law were overturned or proven wrong, then a minority of citizens would be disadvantaged. For a government to be just and equitable, it must compensate those who had relied on its laws. That was good policy. Consequently, he proposed the essence of what would become that week's Article IX: "The legislature shall have no power to pass laws for the emancipation of slaves without the consent of their owner, previous to such emancipation, or a full equivalent in money for slaves so emancipated."<sup>188</sup>

#### **OTHER VOICES IN VIRGINIA AND KENTUCKY**

For Virginians, property in slaves had a long history, and the loss of such property had recently caused a great deal of anger. During the Revolutionary War, a large number of slaves had been "seduced" to flee to the British under Lord Dunmore's Proclamation; at the end of the war they had been carried off or transported to places of freedom (England, Nova Scotia, Sierra Leone) or, unfortunately, continued servitude in the Caribbean as promised for their services. It was estimated that more than 30,000

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*Notes on the State of Virginia* because of strong antislavery sentiments therein, and he refused to condemn slavery lest such an attack from someone of his position be premature or solidify its defense."

<sup>188</sup> Martin, *Antislavery Movement*, 13-14.



participated in this “greatest slave revolt in American history.”<sup>189</sup> According to one of the first Kentucky historians Humphrey Marshall, because of the loss of their slave property, “the prejudices, and the passions of the multitude, were completely enlisted against Great Britain.”<sup>190</sup>

In the subsequent Treaty of Paris to end the Revolutionary War in 1783-4, slaves were legally recognized as property by the Congress of the United States: “both American law and British practice recognized that man might have property in man.”<sup>191</sup> Therefore, slaveowners demanded compensation for the injustice of carrying away their property. Congress eventually ratified the treaty though one of the conditions was not met: that the British return the slaves or compensate for the loss of property. Virginia refused to comply with a second condition of the treaty that she repay the suspended debts or return the confiscated property of British citizens until England satisfied the loss suffered by so many Virginians. They were also ready to attack the British forts in Quebec and the Northwest Territory because the British would not relinquish them until Congress ratified the treaty. Consequently, this third condition was not met, and British-abetted Indian problems became more severe in Kentucky. Nothing, however, not a weak Congress nor Indian aggression, incensed Virginians and Kentuckians for so many years from 1775 through 1812 (at the publication of Marshall’s *History*) as the loss of their property in slaves.<sup>192</sup>

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<sup>189</sup> See Ford, *Deliver Us*, 22; and Nash, *The Forgotten Fifth*, 22-41. For a fictionalized version of events, see Lawrence Hill, *The Book of Negroes* (New York: HarperCollins, 2007)—also titled *Someone Knows My Name* in the sensitive United States.

<sup>190</sup> Marshall, *The History of Kentucky*, I:213.

<sup>191</sup> Don E. Fehrenbacher, *The Slaveholding Republic: An Account of the United States Government’s Relations to Slavery* (New York: Oxford University Press, 2001), 26.

<sup>192</sup> Marshall, *The History of Kentucky*, I: 194-213. The Marshall family was from the piedmont area of Virginia. Humphrey was born in 1760 and served in the Virginia artillery as

Equally seething were the petitioners who reacted immediately to the petition to the Virginia House of Assembly in 1785 of the Methodists to gradually emancipate slaves. Two days later a group of Virginia planters petitioned the Virginia House of Assembly against any form of emancipation. The introduction to their petition implied a threat. Wading through “Seas of Blood,” Virginia had dissolved its union with Britain in order to keep their liberty and rights to property secure. Freeing slaves was a plot concocted by “deluded men,” “Enemies of our Country,” “Tools of the British Administration” to “wrest from us our slaves.” They needed to acknowledge that slavery was supported by the word of God in both Old (Leviticus) and New (St. Paul) Testaments. Moreover, the indignant, yet fearful, petitioners were not going to permit that which would be ruinous to the state or and be productive of

Want, Poverty, Distress and Ruin to the free Citizens; —Neglect, Famine, & Death to the helpless black Infant and superannuated Parent; the Horrors of all the Rape, Murders, Roberies, and Outrages which a vast Multitude of unprincipled, unpropertied, vindictive and Remorseless Banditti are capable of perpetrating; —inevitable Bankruptcy to the Revenue, & Consequently Breach of public Faith, & Loss of Credit with foreign Nations; —and lastly, sure and final Ruin to this now free and flourishing County.<sup>193</sup>

After eliciting much discussion, that anxious petition was narrowly rejected; the following petition for relief from personal ruin was not. In August, 1789, Benjamin Stevenson petitioned the General Assembly of Virginia to be spared the penalty for having two years earlier imported “a few Negro slaves” in contravention of the Virginia

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captain. He was cousin to Chief Justice John Marshall. His family and their relations were farmers and plantation owners during the Revolutionary War. See “Marshall, Humphrey,” *American National Biography Online*, Oct. 31, 2010<[http://www. anb.org.ezproxy.library.dal](http://www.anb.org.ezproxy.library.dal)>. See also Isaac, *Landon Carter’s Uneasy Kingdom*, 3-9.

<sup>193</sup> Kaminski, *A Necessary Evil*, 35-36. Days later another petition argued that even the 1782 law allowing individuals to free their slaves be repealed.

law prohibiting the importation of slaves into the state which included the County of Kentucky. The petitioner pleaded ignorance of the law: he was so busy procuring “Shelter and Sustenance for a numerous Family” that he was not able to learn about the law. He pleaded that it was not willful but simple negligence and that if he lost the slaves he would be faced with “the prospect of utter ruin.” Keeping the slaves would “secure to him the possession of the hard earnings of many Years industry, and deliver his beloved Wife and Children from that poverty which otherwise will be unavoidable.” Nine of his friends or neighbors signed in support of his petition.<sup>194</sup>

These petitions and the following are but a few examples of the passion evoked by the thought of emancipation prior to the constitutional convention of 1792. The *Kentucky Gazette* also provided the opportunity for proslavery voices to reach the people outside the convention. In 1791, similar to George Nicholas’s argument, penname “Little Brutus” presented a biblical argument against what David Rice would later claim was both unjust and not good policy. He wrote that even if their fathers had unjustly acquired slaves by force or bought Africans sold by traders, the sons had a right to keep them as property because they were innocent of the original crime and religion absolved them from the sins of their fathers. Moreover, the Bible permitted purchasing bondspeople and keeping them and their children forever (“until the year of Jubilee”). Using or selling what was rightfully the owner’s was a custom long established in the past.<sup>195</sup>

In addition, “Little Brutus” argued smugly that the Act of Virginia allowed a man to free his slaves anytime he wanted if his conscience bothered him. Therefore, “no man, or body of men, has a right to deprive me of my honest and legal acquired property...” In

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<sup>194</sup> Robertson, *Petitions*, 125-127.

<sup>195</sup> “Little Brutus,” *Kentucky Gazette*, December 17 and 24, 1791.

addition, a ban on slavery would discourage the arrival of some of the best kinds of immigrants; additionally, the tax on slaves provided “a great source of revenue” for the state. Finally, blacks needed laws to govern them because of a number of failings: “destitute of property, a natural tendency to idleness, void of Religion, Education, Honour, Honesty, Understanding, Gratitude, or any of those fine feelings of humanity...” According to Jeffrey Brooke Allen, “Little Brutus,” by focusing more on the economic argument or property-related issue rather than a “necessary evil” argument, “spoke for a decided minority of early proslavery spokesmen.”<sup>196</sup>

#### NATIONAL VOICES IN DEFENSE OF SLAVERY

The above notes of George Nicholas and proslavery sentiments of the petitioners and letter writers echoed earlier and current debates about slavery. Larry E. Tise traced the slavery debate back to the early seventeenth century in the colonies as the need for labor began to shift from indentured servants to slaves and their number increased. According to Tise, the earliest known written defense of slavery came from John Saffin’s 1701 pamphlet, *A Brief and Candid Answer to a Late Printed Sheet, Entitled, The Selling of Joseph*, in answer to fellow Massachusetts justice Samuel Sewall’s *The Selling of Joseph: A Memorial*. Angered at the term “manstealing,” Saffin penned a general defense of slavery which, according to Tise, contained “twenty of the twenty-six arguments that

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<sup>196</sup> Allen, “The Origins of Proslavery Thought,” 81. See Harold D. Tallant, *Evil Necessity: Slavery and Political Culture in Antebellum Kentucky* (Lexington: The University Press of Kentucky, 2003), 1-2 for an explanation of the beginning of the “necessary evil” argument in 1798-1799 letters published in the *Kentucky Gazette* by “Scaevola” who was Henry Clay.

became the center of proslavery thinking.”<sup>197</sup> Some of them were biblical sanctions, rights of man, inferiority of Negroes, positive good of Christianity and care for them, threat of revenge, need to send freed ones out of country—and reimbursement to slaveowners for their property. A highly educated man, a lawyer, a plantation owner and slaveholder, George Nicholas, like other wealthy plantation owners fully invested in slavery, would have had read these arguments and similar notions about the inferiority of slaves, for instance, in the *Notes on the State of Virginia* circulated in 1787 by their own Governor Thomas Jefferson. Perhaps, he would have heard them in the debates of the constitutional ratifying convention at the House of Assembly in Virginia.

No little pamphlet, however, was as powerful as a written document that preceded the Kentucky debate. That document was the Constitution of the United States. Its final form was strenuously argued during the deliberations of the summer of 1787 and sent in the autumn to the states for debate and ratification. According to historian Paul Finkelman, this document created a national law protecting slavery that was followed by “almost all Americans presidents and their cabinets” and defended by the United States Supreme Court. In his examination of the convention leading to the Constitution, Finkelman detailed how this document was proslavery. First, in addition to numerous other clauses protecting slavery—such as requiring the North to provide an army or arm Southern militias to quell “domestic” insurrections—there were other essential provisions regarding slavery: “the three-fifths clause,” which eventually gave the Southern states more electoral votes; “the slave trade clause,” which prohibited Congress from ending the African trade before 1808; a fugitive slave clause; and the clause preventing Congress

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<sup>197</sup> Tise, *Proslavery*, 16-36. For excerpts of critiques and defenses of slavery, see also Wood, *Slavery*, 113-122.

from making any amendments to the slave importation clause for twenty years. Thus the South received “special treatment” for its “peculiar institution.”<sup>198</sup>

With the issue of slavery complicating “almost every debate,” Southerners and Northerners colluded in hammering out “the Great Compromise” which gave Southern states a temporary equalization in the House of Representatives based on three-fifths of their slaves (as the number of slaves grew, so did the advantage for the South; by 1800, fourteen “slave seat” votes secured Jefferson’s election over Adams) and a temporary equalization in electoral votes in spite of only having two senators per state in the Senate.<sup>199</sup> “In an alliance for profit,” Congress also colluded in protecting slavery in what has been called “the dirty compromise.” Though having banned the transport of slaves from Africa, the North would benefit from a clause that required only a simple majority for any vote on navigation and commerce and from transporting commodities produced by slave labor; with the North appeased, the South would benefit from allowing the slave trade to continue potentially for twenty years—untaxed.<sup>200</sup>

This, in a nutshell, was the essence of new Constitution to be debated by the states. Since there had been moral arguments against protecting slavery in the Constitution and reservations about slavery produced by Virginians themselves, and, according to David Waldstreicher, the Constitution did not mention slavery by name,

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<sup>198</sup> Paul Finkelman, *Slavery and the Founders: Race and Liberty in the Age of Jefferson* (Armonk, NY: M. E. Sharp, 2001), 6-7. For his 2008 bicentennial update, see Finkelman, “Regulating the African Slave Trade,” *Civil War History* 54.4 (Dec. 2008), 379-405. See also Don E. Fehrenbacher, *The Slaveholding Republic: An Account of the United States Government’s Relations to Slavery* (New York: Oxford University Press, 2001), 29-44.

<sup>199</sup> Finkelman, *Slavery and the Founders*, 10-22. The electoral votes would enable the Southern states to influence presidential elections: “Thus, the fundamentally antidemocratic electoral college developed, at least in part, to protect the interests of slavery.” Fourteen slaves seats: see Leonard L. Richards, *The Slave Power: The Free North and Southern Domination, 1780-1860* (Baton Rouge: Louisiana University Press, 2000), 42.

<sup>200</sup> Finkelman, *Slavery and the Founders*, 26-29.

how did Virginians interpret this document they were to agree to? Waldstreicher has argued that there were anti-federalists in Kentucky County who feared Congress would eventually prevail over states' rights and find a way around the "silences" in the Constitution and abolish slavery. However, eastern federalists like James Madison, who lamented the continuation of slavery, defended the compromises and voted to ratify so that there would be, at least, a union. Virginia's decision to ratify—and Nicholas argued at the convention for ratification—would affect future Kentucky's statehood by including it under a "proslavery" federal constitution.<sup>201</sup> Shortly thereafter in 1790, to the probable delight of Virginians, Congress voted to permit slavery in the area south of Kentucky, the future State of Tennessee called the Southwest Territory.<sup>202</sup>

If the United States constitution did not emancipate slaves or abolish the African slave trade, how could Kentucky do otherwise? George Nicholas asked the same question about the right of the Kentucky constitutional convention to adopt any measure, such as emancipation, that had not been consented to by the larger body of which they were a smaller part. In his opening note, he argued that there were "many important points already settled," such as, "the right of property." Since Kentucky would initially be governed by the laws of Virginia, it was George Nicholas's opinion that this convention did not have the right to "destroy or curtail" a law of the larger governing body of Virginia.<sup>203</sup>

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<sup>201</sup> David Waldstreicher, *Slavery's Constitution: From Revolution to Ratification* (New York: Hill and Wang, 2009), 3 and 142-145. See also Watlington, *The Partisan Spirit*, 156: influenced by the court party's antifederalism, ten voted against ratification, three in favor, one abstention.

<sup>202</sup> Ford, *Deliver Us*, 21.

<sup>203</sup> Nicholas, "Slaves," 1.

## RACISM AND PATERNALISM

In addition to Virginia's various laws which Kentucky was to inherit, there were customs underlying George Nicholas's position. The first engrained custom that would discourage any propensity toward emancipation, with or without compensation, produced an attitude that historian Alden T. Vaughan traced back to the first white British explorer Captain John Smith: "White Virginians had from the outset a deep-seated antipathy to... [Africans]." Vaughan argued that custom preceded law; that is, not until the 1660's and 1670's did Virginia establish "de jure what had generally existed from the beginning de facto and closed the remaining loopholes in a rapidly evolving system of racial slavery."<sup>204</sup> Thus George Nicholas, those soon-to-become Kentuckians, and white generations before them inherited a system of prejudice and slavery that, as Jordan wrote, had created a "cycle of debasement" in which "once the Negro became fully the slave it [was] not hard to see why white men looked down upon him."<sup>205</sup>

Subjecting slaves to enforced conditions of ignorance and poverty reinforced slaveholders' perceived inferiority of poor, ignorant slaves: they *were* this way, not because we *made* them this way. According to Jordan, while the antislavery advocates argued that equality and liberty were inalienable rights of man, the proslavery apologists also developed an "innate" argument. The Negro was naturally inferior and "utterly devoid of reason." Thus less than human, slaves could be reduced to working property.<sup>206</sup>

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<sup>204</sup> Alden T. Vaughan, "The Origins Debate: Slavery and Racism in Seventeenth-Century Virginia," *The Virginia Magazine of History and Biography* 97.3 (July 1989), 322-326. In attempting to determine which historiographic source would most likely explain the origins of racism or what the consensus would be, Vaughan cited Eric Williams' thesis that "slavery was not born of racism; rather racism was the consequence of slavery" 315. However, whichever came first, by 1792, racism was well entrenched and it was based on the black slave as inferior.

<sup>205</sup> Jordan, *White Over Black*, x and 44.

<sup>206</sup> *Ibid.*, 304-311.



Thomas Jefferson reinforced this idea of inferiority by summarizing his biases and probably those of the day in his *Notes on the State of Virginia*. Not considering in detail the systematic debasement slaves had suffered for generations, slaves, he wrote, were animals in passion and nature; they were intellectually inferior; they exercised no foresight or judgment; they lacked courage, arts and poetry; they were a potential threat to white beauty if miscegenation were allowed.<sup>207</sup>

These *Notes*, finished in 1782, were not widely circulated until 1787 because Jefferson worried about their contradictory antislavery expressions. Jefferson “hated slavery” but, nevertheless, thought Negroes mentally inferior.<sup>208</sup> The *Notes*, according to Jordan, “were more widely read, in all probability, than any others until the mid-nineteenth century.”<sup>209</sup> Not only damaging and diminishing an enslaved people, racism obscured the white man’s view of the humanity of the African American, reduced the slave to property, and perpetuated slavery. Therefore, according to Peter J. Parish, the generation of the American Revolution could retain a philosophy of natural rights for white men “by redefining the humanity of the Negro.”<sup>210</sup>

The second custom that grew from the construct of the inferiority of black slaves was that of the necessity of the plantation owner to care for them, grown men and women, as if they were children. James Oakes traced the subsequent, articulated ante-bellum defense of paternalism back to the culture of the English gentleman found in Richard Brathwaite’s *The English Gentleman* (1631) and other tracts which modeled a

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<sup>207</sup> Jefferson, “Laws,” *Notes*, Query 14:265-269.

<sup>208</sup> Finkelman, *Slavery and the Founders*, 145-148: Finkelman concluded that it was a myth of historians that Jefferson, who bought and sold slaves all his life, hated slavery. He may have hated what it did to whites, hated the fear of rebellion that subjugating so many slaves posed, hated slavery because it brought Africans to America.

<sup>209</sup> Jordan, *White Over Black*, 429-441.

<sup>210</sup> Parish. *Slavery*. 18.

divinely ordained, immutable social order where the English gentleman came immediately under the guidance of a benevolent deity, God the Father. In turn the patriarchal father of a family could expect his wife and children to be subject to him and himself to be responsible for them: “The gentleman never shirked his responsibilities as master of his household. Ideally he ruled his estate with generosity, providing for the material needs of family and servants, never resorting to harsh treatment.”<sup>211</sup> From his *Kentucky Gazette* letter above, George Nicholas may have considered himself such a master who accepted his responsibility for the well-being of his slaves—“his children”—and perhaps would do so until compensated for their emancipation.

Consequently, Nicholas spoke for the majority of both court and county aristocrats, so steeped in the system of slavery that it must have seemed to them the inherent right of the white man. Nicholas’s fellow lawyers and friends, all wealthy plantation owners, agreed with him. They provided a wider influential and powerful backing: Robert Breckinridge, future U.S. Senator; Alexander Bullitt, future President of the State Senate and Lieutenant Governor; Harry Innes, future Justice of Court of Appeals; and Isaac Shelby, future first Governor of Kentucky.<sup>212</sup>

Nicholas, future State Attorney General, spoke for all of them, but the outcome was not a sure thing until the vote itself. Many of the elected members of this tenth convention were new to politics and inexperienced with committee decision-making; moreover, seven of them were ministers who represented their recently enlightened congregations. The convention had been presented with a powerful argument by David Rice. Consequently, Nicholas had to exercise his considerable skill in effectively

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<sup>211</sup> James Oakes, *The Ruling Race: History of American Slaveholders* (New York: Alfred A. Knopf, 1982), 4.

<sup>212</sup> *Journal*, vi.

countering Rice's speech. He did so by marshalling his reasons to logically support and repeat his primary argument that slaves were property. If slaveholders were to be denied the natural right to their property, they had to be compensated for it. Nicholas was not alone in making a legal and civil proslavery argument. He was backed by powerful friends, by Virginia laws, by a federal constitution, and by cultural customs in Virginia. It was up to the members of the convention to decide between two equally thought-provoking arguments.

## CHAPTER FOUR: THE VOTE AND ITS OUTCOME

This first of three constitutional conventions which debated slavery in whole or part—1792, 1799, and 1849—met for only sixteen days from April 2 through April 19, 1792. The *Journal of the First Constitutional Convention of Kentucky Held at Danville, Kentucky, April 2 to 19, 1791*, reported the business of the convention. However, since most of the discussion took place in a Committee of the Whole, only daily activities were recorded, not the discussions or debates.<sup>213</sup> The members may have agreed to this procedure, perhaps due to the general lack of experience for committees to work productively. They may have acceded to George Nicholas's long and carefully prepared opening address outlining many of the ideas that would become the basis of the constitution.<sup>214</sup> Since many of these ideas had been debated publically in the letters to the *Kentucky Gazette* during the preceding months, E. Merton Coulter concluded that the convention "had only to crystallize the opinions already expressed and translate them into fundamental law."<sup>215</sup>

The first major anomaly recorded in the minutes of April 7<sup>th</sup> was the unexplained resignation of George Nicholas, the recorded gratitude of the convention for his "zealous and useful assistance," and his re-election and return on April 10<sup>th</sup>.<sup>216</sup> The sesquicentennial editor of the *Journal*, Samuel M. Wilson, suggested that Nicholas may have taken "umbrage at some charge or insinuation" that he did not represent his Mercer County committee on the subject of slavery or proposed Supreme Court jurisdiction in

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<sup>213</sup> *Journal*, iii-vi. See also Connelley and Coulter, *History of Kentucky*, I: 283-303. See also Willis, "History Kentucky Constitutions" 313.

<sup>214</sup> Harrison, *Kentucky's Road*, 104.

<sup>215</sup> Coulter, "Early Frontier Democracy," 675.

<sup>216</sup> *Journal*, 3.

land cases.<sup>217</sup> The resignation may have been wise because, according to Bennett Henderson Young, in those days elected representatives were more responsible for closely interpreting the sentiments of their constituents.<sup>218</sup> Nicholas could have then garnered strong support for his views on slavery and maintaining existing land titles. He may, however, have wanted to prove to the members of the convention that his extensive constitutional and political experience was indispensable.

The second anomaly was the April 11 unexplained resignation of David Rice—not accompanied by any recognition in the minutes.<sup>219</sup> Though no explanation was recorded, Wilson speculated that Rice felt the emancipationists were losing the argument and he wanted to take his case to his Mercer County electorate just as Nicholas had done.<sup>220</sup> However, the same electors who re-elected Nicholas did not return Rice to the convention. Rice was replaced by another antislavery voice: ironically a colleague of Nicholas, Federal Judge Harry Innes, an intellectual lawyer and political speaker, but who was not seated until April fourteenth, too late, according to Coward, to offer “respectable opposition” as “an antislavery sympathizer” to Nicholas.<sup>221</sup>

#### **ARTICLE IX: THE SLAVERY CLAUSE**

Judge Innes was present to vote after he and the rest of the members listened to a reading of the proposed articles which were broadly based on the Federal Constitution,

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<sup>217</sup> Ibid., vi.

<sup>218</sup> Young, *History and Texts*, 32-33.

<sup>219</sup> *Journal*, 4.

<sup>220</sup> Ibid., vi. Perhaps Rice had been feeling the pressure of growing anti-abolitionist pressure against ministers as it grew to violent confrontations in later years, according to Andrew Lee Feight, “James Blythe,” 21: “Antislavery preachers in the South learned that their message was unwelcome and could lead to violent confrontation.” Many brave supporters of emancipation were “burned” by public reaction to abolition. James Blythe was a fellow minister in 1791.

<sup>221</sup> Coward, *Kentucky*, 24.

the Constitution of Pennsylvania, and the recently ratified Federal Bill of Rights, March 1, 1792.<sup>222</sup> The controversial item in Kentucky's first constitution was Article IX, prepared by George Nicholas.

(1) The Legislature shall have no power to pass laws for the emancipation of slaves without the consent of their owners, or without paying their owners, previous to such emancipation, a full equivalent in money for the slaves emancipated; (2) they shall have no power to prevent emigrants to this State from bringing with them such persons as are deemed slaves by the laws of any one of the United States, so long as any person of the same age and description shall be continued in slavery by the laws of this State; (3) that they shall pass laws to permit the owners of slaves to emancipate them, saving the rights of creditors, and preventing them from becoming a charge to the county in which they reside; (4) they shall have full power to prevent slaves from being brought into this State as merchandise; (5) they shall have full power to prevent any slave being brought into this State from a foreign country, and to prevent those being brought into this State who have been since the first of January, one thousand seven hundred and eighty-nine, or may hereafter be imported into any of the United States from a foreign country. (6) And they shall have full power to pass such laws as may be necessary, to oblige the owners of slaves to treat them with humanity, to provide for them necessary clothes and provisions, to abstain from all injuries to them extending to life and limb; (7) and in case of their neglect or refusal to comply with the directions of such laws to have such slave or slaves sold for the benefit of their owner or owners.<sup>223</sup>

As Nicholas had argued, the first part of Article IX solidified the right of slaveholders to their property or compensation for it—only upon their consent. This right was reinforced by Article XII, Section 12: “...nor shall any man's property be taken or applied to public use without the consent of his representatives, and without just compensation being previously made to him.” A partisan-influenced Legislature could not then unilaterally emancipate slaves without a constitutional amendment. The politics

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<sup>222</sup> *Journal*, iv. See also Barnhart, “Frontiersmen and Planters,” 34, for an analysis of the sources of the Kentucky constitution.

<sup>223</sup> Harrison, *Kentucky's Road*, 162-163. Numbers added to each clause to aid discussion.

and compromises involved in taking such an amendment to the people would delay or make emancipation a lengthy process. Then there would have to be further compromise to permit Legislature to act. Slaveholders could lobby and thwart the process as long as they wanted.

In addition to Article IX another clause, Section 6 of Article VIII, perpetuated in Kentucky “all laws now in force in the State of Virginia” until “altered or repealed by the Legislature.” One of these laws included a fugitive slave law, a necessity because of the increasing problem of runaways so close to the Ohio border.<sup>224</sup> Nor could the Legislature, similar to Virginia law, according to the second part of Article IX, prohibit immigrants to the state from bringing their slaves with them.<sup>225</sup> As a concession to the antislavery voice, this clause was amended so that Legislature could, however, pass a law, similar to Virginia’s 1782 Manumission Act to permit manumission if the owner were free of debt (for which the slave could be taken in lieu of payment), or if the slave would not become a burden to the local county.<sup>226</sup>

This line in the article would defer emancipation to the individual owner (and his conscience) rather than the state or legislature. Nicholas had taunted the owners of slaves to free them if it bothered them so much: Virginia’s laws permitted manumission. At least seven of the eventual antislavery voters held slaves; four were ministers who held slaves, including David Rice himself. After the vote on the article, farmer Andrew Hines was so incensed that he immediately set one slave free and a second later in the 1790’s

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<sup>224</sup> Watlington, *The Partisan Spirit*, 135: she referred to a number of ads in the *Kentucky Gazette* for escaped slaves starting with its first issues in 1788.

<sup>225</sup> Ford, *Deliver Us*, 38.

<sup>226</sup> Harrison, *Kentucky’s Road*, 113. See also “An act to authorize the manumission of slaves” (XXII: May 1782), *The Geography of Slavery*, Nov. 3, 2010<<http://www2.vcdh.virginia.edu/gos/laws1751-1800.html>>.

with all others at his death in 1800.<sup>227</sup> Focusing power in the hands of the individual (and his conscience in the case of slavery) rather than the government was a truly conservative republican idea: the slaveholder himself determines the exercise of his property rights—within guidelines set up by the legislature.

Section four reaffirmed the power of the Legislature to prohibit the importation of slaves as “merchandise” from other states according to the 1788 Virginia law that prohibited such importation into the District of Kentucky.<sup>228</sup> Slaveholders had to register slaves brought in for their own use—for tax purposes—or forfeit them. Section five prohibited importation from foreign countries for resale in Kentucky. Resale of foreign slaves would lead to expanding the slave auctions and markets and compete with Virginia’s “surplus of slaves.”<sup>229</sup> Virginia held more than 293,000 slaves, roughly 39% of its population and more than 42% of all slaves in the United States (see Figure 4 in Chapter V). Many Virginians thought that it would be beneficial for the state’s social and economic future to reduce “the proportion of slaves in the state while protecting the value of existing slave property.”<sup>230</sup> The clause may have been ostensibly designed by Virginian Nicholas to provide a constitutional means of discouraging the Atlantic slave trade or the importation of slaves from the Caribbean, while protecting Virginia’s

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<sup>227</sup> Coward, *Kentucky*, 44.

<sup>228</sup> “An act concerning the importation of laves in the district of Kentucky” (LIV: October 1782), *The Geography of Slavery*, Nov. 3, 2010<<http://www2.vcdh.virginia.edu/gos/laws1751-1800.html>>.

<sup>229</sup> See Steven Deyle, “The Irony of Liberty: Origins of the Domestic Slave Trade,” *Journal of the Early Republic* 12.1 (Spring 1992), 44-46 for an analysis of Virginia’s late 18<sup>th</sup> century motivations in stopping the Atlantic slave trade while making initial forays into marketing and exporting their own “surplus.”

<sup>230</sup> Ford, *Deliver Us*, 29 and 35.



growing practice of selling off its burgeoning black population to Kentucky.<sup>231</sup> In opposition, “a considerable number” of the members, according to Hubbard Taylor who wrote to James Madison during the convention, would like to have seen the constitution specify a certain period for the cessation of the importation of slaves or state the “immediate prohibition of the importation of any for sale” rather than let Legislature deal with it in the future. However, Taylor wrote, George Nicholas would not compromise on anything beyond this resolution.<sup>232</sup> Slaveholders could rely on continuing to import slaves until so regulated by Legislature at some unspecified period in the future.

Sections six and seven represented what has been interpreted as showing a “humanitarian interest”<sup>233</sup> in slaves by permitting the Legislature to pass laws to insure that slaveholders fed and clothed their slaves adequately and not punished them excessively. If a slaveholder persisted in treating a slave inhumanely, then, for that slave’s protection, he or she could be taken away and sold off with the sale price, the just compensation, returned to the owner for the loss of his property. There was no provision of justice or freedom for the injured slave.

Though he dug his heels in on the slavery article, because he was a “political realist,”<sup>234</sup> Nicholas could accept compromise. According to Ford, Nicholas, as lawyer,

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<sup>231</sup> Harrison, *Kentucky’s Road*, 125. See Ethelbert D. Warfield “The Constitutional Aspect of Kentucky’s Struggle for Autonomy, 1784-1792,” *Papers of the American Historical Association*, IV (New York: G. P. Putnam’s Sons, 1890), 36. Writing at the centennial of this constitution, he considered these two sections “progressive” because they “showed an active desire to put a stop to the slave trade.”

<sup>232</sup> Taylor to Madison, April 16, 1792, Madison, *The Madison Papers*, 14: 289-90.

<sup>233</sup> Connelley and Coulter, *History of Kentucky*, 283. See also J. Winston Coleman, Jr., *Slavery Times in Kentucky* (Chapel Hill: The University of North Carolina Press, 1940), 15. He wrote that, during the early frontier period when slaves were “comrades,” and, later, plantations were “kindly, paternal,” slavery in Kentucky was “the mildest that existed anywhere in the world.” Quoted by Eslinger, “The Shape of Slavery,” 23. The “kindly” treatment will be more realistically considered by Marion B. Lucas and Humphrey Marshall in Chapter V.

<sup>234</sup> Harrison, *Kentucky’s Road*, 111.

large landowner and planter, knew he needed the support of the majority of Kentuckians who did not own slaves. He was willing to compromise his strong views on suffrage based on property qualifications<sup>235</sup> to construct Article III to read that “all free male citizens of the age of twenty-one years” could vote in elections with only state or county residence requirements. Ford concluded that “the conservative concession on a property requirement for voting arguably garnered substantial support for the protection of slavery.”<sup>236</sup> Thomas Perkins Abernethy commented that such a compromise was “truly typical of frontier politics.” Seeming to give the masses a voice in government “while entrenching and safeguarding essential interests was the usual policy adopted by the conservative minority... aided by lethargy and lack of information on the part of the rank and file.”<sup>237</sup>

The proposed Section 1 of Article XII also clarified the position of “free male citizens” by denying slaves inclusion in that section. Nicholas had limited equality in the community to those who had the capacity to “form a social contract.” Similar to Virginia law, slaves could not engage in such contracts.<sup>238</sup> Nor could free African Americans, according to Harrison: though Article III did not specify free “white” males, blacks were not considered citizens. Therefore, they could not benefit from the equal protection guaranteed by the remaining twenty-eight sections of this “Bill of Rights” article.<sup>239</sup> Finally, to provide slaveholders a measure of future security and counter antislavery

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<sup>235</sup> Coward, *Kentucky*, 27: Virginia required fifty acres.

<sup>236</sup> Ford, *Deliver Us*, 41.

<sup>237</sup> Abernethy, *Three Virginia Frontiers*, 78.

<sup>238</sup> Kaminski, *A Necessary Evil*, 8. This article was similar to the 1776 Virginia Declaration of Rights which stated “that all men are by nature equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.

<sup>239</sup> Harrison, *Kentucky's Road*, 122.

attacks from Rice and the six other reverends, an amendment (Article I, Section 24) on the next to last day excluded any “minister of religious societies” from both the House of Representatives and the Senate.<sup>240</sup>

#### THE VOTE AND THE VOTERS

The resolutions of the constitution for the State of Kentucky, mostly written by George Nicholas, seemed to have satisfied the Committee of the Whole in most respects except for Article IX. Slavery had been carefully analyzed and debated from both sides. Rice had argued that slavery was unjust and that continuing it would be bad policy. Nicholas had argued that it would be unjust to eliminate slavery without a good policy to compensate slaveholders. The members of the committee had all the resolutions before them when, according to the *Journal of the First Constitutional Convention of Kentucky*, on Wednesday April 18<sup>th</sup>, Samuel Taylor of Mercer County moved, and James Smith of Bourbon County seconded, the elimination of Article IX. The vote to expunge Article IX, hence eliminating slavery from the constitution and reserving it as an issue for the future Legislature, was taken as a recorded voice vote, the only such vote reported in the convention *Journal*.<sup>241</sup> The results were 26 “nay” votes against eliminating Article IX and 16 “yeah” votes for eliminating it. Figure 2 lists the names along with the acreage they owned and number of slaves they held in 1792.

The names of the voting members and the non-voting members listed in Figures 2 and 3 indicate that those who voted to include Article IX as a cornerstone of Kentucky’s constitution were for the most part slaveholders. Taken together their property in slaves

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<sup>240</sup> Barnhart, “Frontiersmen and Planters,” 32. According to Barnhart, it was not apparently a church-state separation issue but because the ministers were so opposed to slavery.

<sup>241</sup> *Journal*, 10.

averaged twelve, according to tax records of the day—or four times as many as their opponents. Those who opposed slavery still held three slaves on average. Though there are gaps in the numbers (missing tax information as represented by dashes), the other important feature of the tables is that those who voted to perpetuate slavery were owners of significant acreage, roughly holding 2.7 times more land than those of antislavery sentiment. Though there are no records to indicate why they voted the way they had, the preponderance of both acreage and number of slaves would suggest that the proslavery vote had much more to lose, even if compensated.

George Nicholas's proslavery position led to an obvious way to expunge the article.

David Rice's vote would have been a yeah, had he been re-elected. Equally understandable were the votes of the six remaining ministers: Baptists John Bailey, George Smith and James Garrard; Presbyterians James Crawford and Benedict Swope; and Methodist Charles Kavanaugh.<sup>242</sup> Since he was also labeled as a "zealot," Garrard was unpersuasive because he seemed to have lacked the "gift of ready speech" to influence other members.<sup>243</sup> However, what may have undermined the support for the ministers' arguments, was the assumption, as reported by Coward, that they had been elected only as emancipators because none had participated in the prior conventions, and Baptists, especially, generally declined to get involved in politics.<sup>244</sup>

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<sup>242</sup> Harrison, *Kentucky's Road*, 110-111.

<sup>243</sup> Coward, *Kentucky*, 23.

<sup>244</sup> *Ibid.*, 21.

**Figure2: Members who voted on April 18<sup>th</sup>, their acreage and slaves**

proslavery vote nays = 26	acreage 1792	slaves	antislavery vote yeahs = 16	acreage 1792	slaves
Campbell, John	29,402	11	Bailey, John (Rev.)	--	4
Clay, Thomas	1,000	3	Conway, Miles	637	5
Edwards, John	31,150	20	Crawford, James (Rev.)	--	4
Grubbs, Higgason	13,431	--	Froman, Jacob	4,448	--
Harrison, B.	12,600	1	Frier, Robert	953	2
Harrison, C.	joint ↑	15	Garrard, James (Rev.)	38,704	23
Hobbs, Joseph	--	--	Hines, Andrew	4,398	2
Johnson, Robert	65,890	--	Innes, Harry	202	--
Kennedy, Joseph	1,000	3	Kavanaugh, C. (Rev.)	1,400	--
Kennedy, Thomas	5,791	7	Lewis, George	88,833	--
King, William	--	4	McKinney, John	1,150	--
Lewis, Thomas	25,748	2	Smith, George S. (Rev.)	562	7
Logan, Benjamin	6,287	8	Smith, James	9,703	--
McDowell, S.	12,032	6	Swope, Benedict (Rev.)	3,500	--
Montgomery, W.	10,666	3	Taylor, Samuel	2,500	--
Nicholas, George	20,000	46	Wilson, John	3,001	--
Rankin, Robert	--	1			
Sebastian, B.	--	9			
Shelby, Isaac	9,591	28			
Steele, William	3,280	10			
Taylor, Hubbard	27,969	24			
Wallace, Caleb	3,620	15			
Walton, Matthew	58,539	--			
Waring, Thomas	--	5			
Watkins, John	10,780	27			
Young, Richard	45,251	11			
<b>Byrd's averages</b>	14,345	9.961		5,190*	2.937

Figure 2: Those who voted on April 18, to expunge proposed slavery Article IX, based on available tax records.

\*Rounded averages without land speculator George Lewis.

**Figure 3: Influential non-voting members with their acreages and slaves**

Bullitt, Alexander	9,390	53	Rice, David (Rev.)	1,600	4 (est)
Breckinridge, Robert	3,550	11			
Taylor, Richard	7,433	20			
adjusted rounded averages*	13,564	12		4,979	3

Figure 3: Rounded averages \*including the influential non-voting members of the convention. Since in 1792 the average Kentucky slaveholder held 4.32 slaves (on the tax records as over age 12), the proslavery voter would seem to have had a greater interest in preserving “property.”<sup>245</sup>

One of the partisans—Virginian, slaveholder, but a small farmer<sup>246</sup>—Samuel Taylor, who moved the motion to expunge Article IX, favored emancipation, either immediate or gradual.<sup>247</sup> Taylor, “blunt and outspoken,” had debated with Nicholas on the issue of slavery at their Mercer County committee level.<sup>248</sup> Other partisans, according to Barnhart, were small-holding farmers, immigrants respectively from Scotland, northern Ireland, and two from Germany: Miles Conway, Andrew Hines, Jacob Froman and Robert Frier. John McKinney and John Wilson were farmers from the Valley of Virginia. Finally, James Smith was from Pennsylvania and had aided in forming Pennsylvania’s “radical” constitution of 1776. There is no commentary on the motivation of land speculator George Lewis.<sup>249</sup> Finally, the proslavery votes of Benjamin Sebastian, Caleb Wallace, and Mathew Walton, were considered “strange” by John Mason Brown

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<sup>245</sup> Barnhart, “Frontiersmen and Planters,” 19-36: biographical information and some land holdings of the delegates; Byrd, Part I: 200-202: primary source for the names, acreage and number of slaves; Coward, *Kentucky*, 37-68: slaveholders and number of acres and slaves; Harrison, *Kentucky’s Road*, 108: average of 4.32; Hudson, “Slavery,” 249-283: references throughout to “first families” and number of slaves before and after 1792; *Journal*: primary source of the names of voting and non-voting delegates.

<sup>246</sup> Barnhart, “Frontiersmen and Planters,” 30.

<sup>247</sup> Watlington, *The Partisan Spirit*, 214.

<sup>248</sup> Coward, *Kentucky*, 24.

<sup>249</sup> Barnhart, “Frontiersmen and Planters,” 30.

because he said they were known to have been emancipationists.<sup>250</sup> However, according to Barnhart, Protestant clergymen Wallace and Sebastian<sup>251</sup> “had ceased to exercise the office and had given evidence of some departure from its ideals.” Sebastian, for instance, was also a lawyer.

Henry Innes, another sympathizer, was a judge and colleague of George Nicholas. Though a wealthy slaveholder,<sup>252</sup> he replaced Rice as an antislavery candidate but his motivation has not been revealed. Perhaps he wanted what would have resulted from the expulsion of the article: a future legislature that would have been able to debate the issue without constitutional restrictions.<sup>253</sup> If there were no restrictions, then any given legislature would have been able to end immediately or gradually the institution of slavery. Innes might have had other reasons to favor a different form of emancipation or a differently worded article. Years before in 1786 he had belonged to the Danville Political Club which had debated and rejected tobacco as an ideal staple export crop for Kentucky.<sup>254</sup> Then in 1787 as a member of the Kentucke Society for Promoting Useful Knowledge, he had invested in a tannery and advertised for nine Negroes to work in it. He also belonged to the subsequent Kentucky Manufacturing Society which met from the fall of 1789 to promote commercial development of Kentucky as a center for supplying the Mississippi River and the West. He and George Nicholas were interested in setting up a cotton processing and clothing factory which would need access to trained labor.<sup>255</sup> As the cities of Frankfort, Louisville, and Lexington were only starting to grow in size and

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<sup>250</sup> Brown, *The Political Beginnings*, 230.

<sup>251</sup> Barnhart, “Frontiersmen and Planters,” 28.

<sup>252</sup> Coward, *Kentucky*, 44. Yet his name did not appear on the tax records for 1792.

<sup>253</sup> Harrison, *Kentucky's Road*, 110.

<sup>254</sup> Speed, *The Political Club*, 129.

<sup>255</sup> Byrd, Part II:288; Watlington, *The Partisan Spirit*, 138, 193-195;

industry, the only skilled and unskilled labor available was geared to agriculture and that was enforced slave labor. Innes may have understood that forced labor rather than self-motivated labor would not satisfy Kentucky's commercial and manufacturing growth.

However, giving the Kentucky elected Legislature the power to determine the future of slavery would have been a dangerous idea for a person like Nicholas, perhaps even Innes. With property restrictions lifted from voting, each free man could determine who would represent him in the Legislature and what could be deliberated. Propertyless men generally favored the partisan party, according to Watlington, and partisans favored immediate or gradual emancipation of slaves without compensation to slave owners.<sup>256</sup> Watlington quoted George Nicholas as saying that they "had been clamorous on that subject, as well in the convention as out of it."<sup>257</sup> Rice, as explained in Chapter II, had referred to some of their feelings in his speech:

A man, who has no slaves, cannot live easy and contented in the midst of those who possess them in numbers. He is treated with neglect, and often with contempt... his children are looked upon and treated by theirs as underlings. These things are not easy to bear... he will not long abide...<sup>258</sup>

Such a man would have come from the more numerous frontiersmen who were early pioneers mostly from the back-countries of eastern colonies or states. According to Barnhart, having been subjected to discriminations by planters and leaders of eastern counties, they were poorer, less educated, more individualistic and more oriented to a democracy of and by the people. They became Kentucky's yeoman farmers or tenant farmers who generally did not own slaves. They felt themselves disadvantaged by

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<sup>256</sup> Watlington, *The Partisan Spirit*, 226.

<sup>257</sup> *Ibid.*, 220.

<sup>258</sup> Rice, *Slavery*, 16.



competition with slaves.<sup>259</sup> They also felt taken advantage of by land speculators.

Partisans saw lawyers as “self seeking villains”<sup>260</sup> who enriched themselves unravelling complicated land claims and pocketing the land in payment for their services.

Partisans were opposed to what they considered the elite, well-to-do, educated class who believed themselves to be the proper rulers of Kentucky.<sup>261</sup> Like George Nicholas who represented them, they were well-educated or trained as lawyers, surveyors or large plantation owners and came mostly from Virginia. They believed that power stemmed from the people, but that the people should elect representatives more experienced than themselves in governing or the law. They also believed that, once elected as the people’s representatives, they could act for what they thought was good for the people without further recourse to the people. Most members of this “articulate center” party held and controlled slaves under Virginia slave codes.<sup>262</sup>

Nicholas had squelched the partisans’ hopes of land distribution by insisting on Article V, Section 3, which maintained the Virginia land title system under the Kentucky Supreme Court. Those who had Virginia title to land could keep it. He was aided by a major landowner and influential non-voting member of the convention, Alexander Bullitt. Bullitt was also one of the largest slaveholders in his county and in Kentucky as well. According to Hudson, in 1792 “there were 824 enslaved African-Americans in Jefferson County and Bullitt owned fifty-three of them.”<sup>263</sup> Therefore, the more affluent and politically connected one was, the more land one was able to obtain clear title to. With

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<sup>259</sup> Barnhart, “Frontiersmen and Planters,” 21-23.

<sup>260</sup> Coward, *Kentucky*, 21-22.

<sup>261</sup> Watlington, *The Partisan Spirit*, 225-6.

<sup>262</sup> *Ibid.*, 227-231.

<sup>263</sup> Hudson, “Slavery,” 273: Bullitt held 40 in 1790 according to the tax records; he held between 65 and 80 between 1795 and 1814. Bullitt was also speaker of the senate from 1792 to 1800 when he became lieutenant governor.

more land and the wealth it brought, one would be able to purchase more slaves to develop and work it.<sup>264</sup>

Consequently, the more the partisans would be left out. No wonder they were “clamorous.” Even Innes, who voted with them, wrote that “the Peasantry are perfectly mad; extraordinary prejudices and without foundation have arisen against the present Officers of Government—the lawyers and Men of Fortune—they say *plain honest Farmers* are the only men who ought to be elected to form our Constitution.”<sup>265</sup> However, Innes could rest assured that his friend Nicholas had tied the hands of the partisans constitutionally, with regard to land and slaves, though Innes must have disagreed with some aspect of the proslavery article.

In light of the political debate, how had the vote gone? Watlington attempted a correlation between “party” preference and the vote. Of the ten members she had identified as partisans, six voted to eliminate the article and four voted to keep it. Of the fourteen members identified as court or county party members, nine voted proslavery and three against. The vote was, however, directly related to slaveholdings and land ownership: twenty members with holdings between 1,400 and over 10,000 acres voted to retain Article IX; ten members who owned no land up to 1,400 acres voted to expunge.<sup>266</sup> The majority who voted to keep the article or influenced the proslavery vote owned, on average, 12 slaves. The minority owned 3. More land required more slaves.

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<sup>264</sup> Hudson, “Slavery,” 259.

<sup>265</sup> Innes to Thomas Jefferson, Aug 27, 1791, *Jefferson Papers*, LXVI, Library of Congress, as quoted by Watlington, *The Partisan Spirit*, 215-6.

<sup>266</sup> *Ibid.*, 220-221.

## THE SUCCESS OF GEORGE NICHOLAS

George Nicholas presented the more appealing argument and demonstrated the effective leadership that guaranteed a proslavery clause in the Kentucky constitution. In a letter to James Madison, Nicholas said he expected the slavery article would bring down severe criticism from the North. He reiterated that there was no choice: “the laws of Virginia declared them [the slaves] property, those laws have obliged the creditor, the orphan and the widow to take them in satisfaction of just demands for money.” If the laws of Virginia were wrong or to be proven wrong, then owners had been deceived and needed to be compensated for having relied on those laws. If emancipation were to be a public benefit, the state had to pay for it... Concerning the importation of slaves into Kentucky,

this measure will not add one to the number of slaves in the world; the only difference being that they will be slaves in Kentucky instead of Virg[ini]a or Maryland... Policy obliged the convention to do something or Kentucky would receive no more valuable emigrants from the five S[outhern] states.<sup>267</sup>

Nicholas succeeded because he was more experienced in politics and more skilled in debating compared to most of the other members of the convention. Having been in Kentucky less than three years and having kept out of local politics up to this convention, he was perceived as neutral, and hence regarded as trustworthy. In fact, he had enough respect to be chosen as one of only two lawyers elected to the convention; consequently, “the gentry depended on him.”<sup>268</sup> Once he decided to make his contribution, he brought with him the experience of having argued against Patrick Henry for Virginia’s ratification

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<sup>267</sup> Nicholas to Madison, May 2, 1792, *The Madison Papers*, 14:297.

<sup>268</sup> Coward, *Kentucky*, 22, 25. The other was Benjamin Sebastian whose acreage was not listed on the 1792 records. However, he had nine slaves, perhaps accumulating them as payment of property settlements.

of the U.S. Constitution, familiarity with the Pennsylvania constitution, and, according to Harrison, “well formulated ideas on what form Kentucky’s constitution should take.”<sup>269</sup> Moreover, according to Brown, Nicholas’s “argument was elaborately prepared and carefully reasoned, from premises that he stated with strength and terseness... And it had weight chiefly with the more intellectual element of the convention.”<sup>270</sup> Brown also believed that if Nicholas had not been a member of the convention Article IX would not have been written as it was or at all and there would have been “no mention of slavery” in the first constitution.<sup>271</sup>

Though only six of the convention had attended college—two of them ministers<sup>272</sup>—it can be assumed that Brown was talking about Watlington’s “articulate center.” Of the forty-two voting members, three non-voting members, and David Rice who resigned, Byrd found that only sixteen had had experience with constitution making and convention procedure, either in at least one of the previous nine conventions or the Virginia ratification debates.<sup>273</sup> Perhaps, the convention proceeded rapidly over sixteen days and was effectively managed by George Nicholas because the membership of this tenth convention was largely inexperienced and easily led even though a significant minority was politically adverse to the “wiles of lawyers and large landowners.”<sup>274</sup> In the end, thanks to George Nicholas, Kentucky became the first new state to guarantee constitutional protection for slavery.<sup>275</sup>

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<sup>269</sup> Ibid., 13; Harrison, *Kentucky’s Road*, 104.

<sup>270</sup> Brown, *Political Beginnings*, 231.

<sup>271</sup> See Willis, “History of Kentucky Constitutions,” 316.

<sup>272</sup> Coward, *Kentucky*, 21.

<sup>273</sup> Byrd, Part II:288.

<sup>274</sup> Watlington, *The Partisan Spirit*, 217.

<sup>275</sup> Eslinger, “The Shape of Slavery” 4.

George Nicholas had been successful not only because of his political and managerial skills. He had a message favorable to the convention. By insisting on compensation for the emancipation of slaves, he swayed those who held slaves to consider the implications of losing their source of labor and wealth. First, there was the loss of labor. That would severely limit the expansion of their landholdings in spite of receiving a one-time payment of cash for its replacement. A slave labored for life, not just a year. If treated humanely so that the slave remained strong and healthy, his or her value increased much more significantly over ten, productive adult years than simple interest on cash; even as they grew less able or infirm, there were still tasks they could perform.<sup>276</sup> Second, where could they hire the labor necessary to support their plantations and personal lifestyles? Finally, slaves were a symbol of wealth because they were a known commodity with a value. The more slaves, the more prosperity, the higher one rose in society. In order to protect the interests of the minority of slaveholders in the state of Kentucky, the members of the convention who, as slaveholders, were in the majority had no other recourse than to but to vote with George Nicholas and stifle any pangs of conscience that might have been pricked by David Rice.

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<sup>276</sup> Slavery was profitable. See Robert William Fogel, *The Slavery Debates, 1952-1990: A Retrospective* (Baton Rouge: Louisiana State University Press, 2003) 22. Fogel showed “that the profitability of slavery was not only high but increased rapidly during the last two decades of the antebellum era.” See also James L. Huston, *Calculating the Value of the Union: Slavery, Property Rights, and The Economic Origins of the Civil War* (Chapel Hill: University of North Carolina Press, 2003) 40-45. Huston concluded that “property rights in Africans...established the ways southerners accumulated wealth, earned income, enjoyed prosperity... though the institution could only operate if force were applied.” And though related to the later antebellum period, see Gavin Wright, *The Political Economy of the Cotton South: Households, Markets, and Wealth in the Nineteenth Century* (New York: W. W. Norton & Company, 1998) 41. Wright concluded that statistical evidence clearly supported the “overriding and increasing importance of the value of slave property.”

## THE FAILURE OF DAVID RICE

David Rice was a capable preacher, but not so effective as a politician. Coward thought that Rice weakened his own cause when he failed to counter the economic concerns of his listeners; he dismissed attracting Little Brutus's "better class" of emigrants from slaveholding states; he did not have a specific program, and he passed over their fears of miscegenation. He believed that slavery was so wrong that he ignored their widespread fears and concerns. More of a "pulpit firebrand,"<sup>277</sup> Rice "must have shocked the sensibilities of his listeners."<sup>278</sup> Rice engaged in sarcasm when ridiculing objections to his plea for emancipation and, perhaps, he may have gone too far and accomplished the opposite effect. Obviously, he did not convince his proslavery opponents to accept his argument. As one example, Rice explained that slaveholders would still benefit from slavery until their current slaves were educated and freed. He could not understand why any man would complain about losing the labor of future generations of slaves:

Is there any such man to be found ? Let us stop a moment to hear his complaint. "I have long lived happy by oppression. I wanted to leave this privilege as an inheritance to my children. I had a delightful prospect of their living also in ease and splendour at the expense of others. This iniquity was once sanctified by a law, of which I hoped my children's children would have enjoyed the sweets; but now this hard-hearted, this cruel Convention has cut off this pleasing prospect.

They have resolved, and alas! The resolution must stand for ever, that black men in the next generation shall enjoy the fruit of their own labour, as well as white men; and be happy according to the merit of their own conduct. If justice be done to the offspring of Negroes, mine are eternally ruined... they are injured, they are robbed, they are undone. What, must young master saddle his own horse? Must pretty little miss sweep the

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<sup>277</sup> Ford, *Deliver Us*, 40.

<sup>278</sup> Coward, *Kentucky*, 40-41.

house and wash the dishes? and these black devils be free ! No heart can bear it!<sup>279</sup>

“No heart can bear” the thought of burdens placed on the children of the rich—“injured,” “robbed,” “undone”—by not guaranteeing them the free labor of blacks and their offspring in perpetuity.” “Alas!” The frustration in his words, the anger in his attack on the men themselves, their greed and guilt, was certainly not designed to win over the proslavery plantation owners.

If this were not enough, he criticized masters for affording slaves only the barest support and subsistence which “often falls short of what is necessary for the comfortable support of the body.”<sup>280</sup> Second, he criticized the “young gentlemen” of the South who “ought to be the honour and support of the state.” However, because of slavery and the attitudes it engendered, these sons of gentlemen were becoming “insignificant and useless” members of society, morals corrupted, dissipating their lives and fortunes: “intolerable nuisances” and “pernicious pests.” Third, he depicted great estates of the south, impoverished by the counterproductive labor of slaves, which demand even more discontented and possibly insurrectionist slaves to maintain production on expanding landholdings, meanwhile driving white farmers off their lands. Finally, he broached the fear of miscegenation—of America turning into a mulatto nation. Rice was afraid that it was already happening with white masters breeding their own mulatto children on black female slaves. White sons subsequently mated with their own enslaved sisters (and aunts and mothers), having been made by their own white fathers. However, though it might

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<sup>279</sup> Rice, *Slavery*, 23.

<sup>280</sup> *Ibid.*, 7. Subsequent quotes in this paragraph are from the following: “young gentlemen...ought,” 9; However...pests,” 10-11; “The matter....recover,” 16; “this...evil,” 24.

not be too late to prevent the imaginary evil of miscegenation by black men on white women, in the matter of white slaveholders of black slaves, “the matter is already gone beyond recovery.” For Rice, this was the horrible truth and consequence of slavery, but his words failed to convince the 1792 convention that “this was the proper time to prevent this evil.”

Moreover, Rice was representing an antislavery group of members who were “non-political, inexperienced, and unpersuasive.” They were divided on their goals with no concrete program to implement. With little help from his colleagues, Rice must have felt that an antislavery position was certain to fail.<sup>281</sup> Therefore, possibly disheartened<sup>282</sup> that his urgent speech was not convincing to the delegates, he may have resigned to take his message back to the county committee which had elected him. Unfortunately, he was not returned to the convention. In his 1812 *The History of Kentucky*, contemporary Humphrey Marshall credited George Nicholas as a distinguished man with “acknowledged talents” compared to others who made up the convention but he found one problem with Rice. Marshall thought he “became a politician by way of experiment on the public temper” to push through his clerical ideas. “If that was the case,” he wrote, “the result was unfavourable to preachers...”: they were made ineligible to be elected to the Legislature.<sup>283</sup>

Rice failed to prevent Kentucky becoming a constitutionally supported slave state as the 15<sup>th</sup> state of the United States. On the last day of the convention the constitution was approved but not submitted to the people for ratification. It was risky to chance a

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<sup>281</sup> Coward, *Kentucky*, 45.

<sup>282</sup> See the footnote in section three of Chapter Five about Rice’s propensity to withdraw from controversy and sink into gloominess as he confessed in his “Memoirs.”

<sup>283</sup> Marshall, *The History of Kentucky*, I: 394.



popular vote when the perplexing issues of landholding, slavery, and electoral votes had been resolved in favor of the gentry.<sup>284</sup> Yet they did not need a popular vote: the members had been elected by their county committees to write a constitution for the people of Kentucky. Advertisements in the paper promised that the people could read the constitution by purchasing a copy from the offices of the *Kentucky Gazette*. Finally, Nicholas proposed that another convention meet seven years in the future, in 1799, to modify, change, or affirm this constitution which made Kentucky a slave state.

Finally, all the blame cannot be laid on Rice's shoulders. He had gone back to his committee for confirmation that his stance was the right one, but he was replaced by Judge Henry Innes who voted on the antislavery side. Innes took Rice's place in the convention just before the vote with no record of his having said anything nor any analysis of his motivation. Here was a possible moment of opposition that was lost. Therefore, it was a table-clearing win for George Nicholas because, according to Coward, Kentucky had been a "new, still malleable" place where the natural philosophy of inherent human rights of the enslaved could have trumped the entrenched property rights of the privileged.<sup>285</sup> In 1792 less than a quarter of Kentuckians owned slaves. The economy did not yet depend on slavery. Yet slavery had prevailed.

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<sup>284</sup> Martin, *Anti-slavery Movement*, 17: he did not believe that Article IX would have been accepted if the constitution had been submitted to the people for ratification.

<sup>285</sup> Coward, *Kentucky*, 37, 46.

## CHAPTER FIVE: CONCLUSION

The slavery of the negroes began in iniquity; a curse has attended it, and a curse will follow it. National vices will be punished with national calamities. David Rice<sup>286</sup>

In 1787 the United States Congress passed the Northwest Ordinance which prohibited slavery and involuntary servitude in the territory which would become the five states of Illinois, Indiana, Michigan, Wisconsin, and Ohio. Ohio would become the 17<sup>th</sup> state in 1803—and a free state. In 1790, according to Hammond, a “weakened” Congress passed the Southwest Ordinance which permitted slavery in the territory that would become Tennessee, the 16<sup>th</sup> state in 1796—and a slave state. Geographically, Kentucky, 15<sup>th</sup> state, lay between them. Kentucky had not been a territory under the United States: Virginia and Virginia’s laws created it.<sup>287</sup> Settlers from the states of Pennsylvania, New York, and New Jersey, as well as from the southern states of Maryland and Virginia immigrated to the three territories for the same free or cheap land with good title. The land in the Ohio territory was more conducive to agricultural crops and small farming; the land in the Southwest, however, was more conducive to the production of cotton. In

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<sup>286</sup> David Rice, *Slavery*, 24. Years earlier, John Mason voiced the same warning: “As nations cannot be rewarded or punished in the next world, they must be in this. By an inevitable chain of causes and effects, Providence punishes national sins by national calamities.” Quoted in Williams, “Slavery,” I: 422. Little did Rice or Mason realize that the calamity, according to Nash, *Forgotten Fifth*, 122, “would claim the lives of more than six hundred thousand Americans and shatter the bodies of as many more, in a war of emancipation... Roughly one lay dead and another crippled for each of the slaves consigned to perpetual unpaid labor in the new United States as Jefferson took office” in 1801. Kentucky was enmeshed in that punishing calamity.

<sup>287</sup> Hammond, *Slavery, Freedom*, 11; see also Harrison, *Kentucky’s Road*, 87-90: in 1789 Virginia passed a resolution permitting the District of Kentucky (formerly the County of Kentucky) to become an independent state. At the ninth convention in 1790 Kentucky delegates petitioned Congress for statehood. It was granted on February 4, 1791, to go into effect on July 1, 1792. See also Fehrenbacher, *The Slaveholding Republic*, 253: Virginia had ceded her territories above the Ohio in 1781.

1792 Kentucky lay in between, not yet producing the cotton or tobacco that would be a exportable crop of its western border, but only hemp fiber which grew readily in the Bluegrass.<sup>288</sup> In all three areas the same political issue festered: the extension of slavery. In Ohio slave interests defied the weakly-enforced ordinance and struggled to repeal it; as for the Southwest, continuing antislavery sentiments tried to limit slavery's spread.<sup>289</sup> It was up to the people of Kentucky, not Congress nor Virginia, to consider both essential antislavery and proslavery arguments in 1792 and make the constitutional decision which resulted in Kentucky becoming a slave state.

What were the reasons behind the convention's vote for Kentucky becoming a slave state? David Rice gave one of the reasons several years later when he answered proslavery advocates, such as John Breckinridge, who condemned antislavery opponents, according to Allen, as "much more radical" than they really were. In a letter he spoke to the reason his passionate speech failed to move a majority of voting members of the convention:

I find but few who will undertake to justify slavery, or defend it on moral principles; but many, who endeavor to excuse themselves, lay the blame on others, and on the difficulties attending the emancipation of slaves. Interest, all powerful INTEREST, closes the eyes and hardens the hearts to a great degree: it gives the least plausible pretence the force of the strongest arguments.<sup>290</sup>

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<sup>288</sup> James F. Hopkins, *A History of the Hemp Industry in Kentucky* (Lexington: University Press of Kentucky, 1951), 4-25. See also Aron, *How the West*, 129. For slave labor see Lucas, *A History of Blacks*, 4. Hemp, which required large amounts of dirty, laborious, repetitive labor, was profitable because it was used for making sails, weaving strong ropes, bagging the South's cotton, and clothing her slaves. It was also not so time-consuming during the year that a planter could not rent out his slaves.

<sup>289</sup> Hammond, *Slavery, Freedom*, 10-12; Fehrenbacher, *The Slaveholding Republic*, 258.

<sup>290</sup> Allen, "The Origins of Proslavery," 89-90: quoted from a mid-1790s letter to a member of the Pennsylvania Society for the Abolition of Slavery by historian. The proslavery position and fear-mongering of John Breckinridge will be discussed in the following section on the 1799 constitution.

Rice thought he had failed because the proslavery vote had not been concerned with any moral argument of keeping another in chains. He said they did not even attempt to justify slavery or take any blame for it because their excuse was that slavery had been always sanctioned by the laws they had been operating under. He also dismissed their excuse that emancipation was just too difficult to accomplish. These excuses he dismissed as “pretence.” He knew that their real reason was self-interest—what slavery could do for them—and it hardened their hearts and closed their eyes to the injustice of slavery.

#### WHY DID KENTUCKY BECOME A SLAVE STATE?

If the question were reversed—Could Kentucky have become a free state?—*the simple answer is no*. The 26 to 16 answer was slightly more complicated. Article IX made slavery a constitutional cornerstone of the State of Kentucky. Why? Was it simply a result of “all powerful INTEREST” as Rice exclaimed? Was it *interest* in the Blackstone *Commentaries* legal sense of “right or title to property”? That was what plantation owners had come to think of their slaves, that is, their property, their comfort and convenience and the guarantee of security for their widows and children. Or was it also *self-interest*, that is, “selfish pursuit of one’s own welfare”?<sup>291</sup> In reviewing the first Kentucky constitution and the two constitutions which followed in 1799 and 1849,

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<sup>291</sup> “Interest, n.”: 1. The relation of being objectively concerned in something, by having a right or title to, a claim upon, or a share in. A. The fact or relation of being legally concerned; legal concern *in* a thing; esp. Right or title to property, or to some of the uses or benefits pertaining to property. 1767 Blackstone *Comm* II. Xx. 323: The estates exchanged must be equal in quantity; not of value...but of interest... Or 5. Regard to one’s own profit or advantage; selfish pursuit of one’s own welfare; =SELF-INTEREST. *Oxford English Dictionary Online*, 14 Sept. 2010 <<http://dictionary.oed.com>>

Bennett Anderson Young agreed with Rice that the chief motivation for voting proslavery was one of selfish pursuit: "... self-interest ruled, as it usually does..."<sup>292</sup>

When it came to justifying slavery, self-interest or the pursuit of one's own welfare was consistently an underlying motive. Matthew Mason cited another example of abolitionist Minister Alexander McLeod's disdain for the "interested motives" which lay beneath the "necessary evil" apology for slavery.<sup>293</sup> Waldstreicher wrote that Thomas Jefferson did not like a French nobleman's observations about the "indolence and dissipation" of Virginians, especially since the Marquis de Chastellux implied that slavery made Virginians more "greedy or interested": he wrote that "fathers of families... are principally occupied with schemes of interest."<sup>294</sup> Finally, Barnett argued that small farmers were interested in slavery because the investment helped minimize the burden of work on the farm, produced income, and represented wealth which gave them conspicuous status.<sup>295</sup>

The "interest" of white families in owning slaves increased rapidly by 51% from 16.9% of Kentuckians who owned slaves to 25.5% in the ten years of 1790-1800, as seen in Figure 4. According to Coward, in 1795-1797, the legislature rejected the offers of land speculators to buy unappropriated lands and opened them up to settlers at between \$40-60 per 100 acres with a four-year grace period for full payment. By 1800 at least 4,400 families had taken advantage of this offer. Consequently, settlement moved out

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<sup>292</sup> Young, *History and Texts*, 35.

<sup>293</sup> Mason, *Slavery and Politics*, 14. This was a sermon from McLeod's *Negro Slavery Unjustified: A Discourse*, published in 1802.

<sup>294</sup> Waldstreicher, *Slavery's Constitution*, 64. He cited François Jean (Marquis de) Chastellux, *Travels in North America in the years 1780-81-82* (New York: White, Gallagher and White, 1827), 291-5.

<sup>295</sup> Todd H. Barnett, "Virginians Moving West: The Early Evolution of Slavery in the Bluegrass," *The Filson Club History Quarterly* 73.3 (July 1999), 233.

from the Bluegrass center of Lexington to the entire state. Slavery, then, was extended as well into these outlying areas.<sup>296</sup> It should be remembered that during this period, only half of Kentuckians owned any land; nine out of ten of those who were landowners owned fewer than the 500 acres which was considered enough to provide a competence.<sup>297</sup> Moreover, according to Martin, large landholders, desiring to provide work for the adult children, “the natural increase,” of their slaves, tended to develop more of their extensive holdings rather than sell land.<sup>298</sup>

**Figure 4: Population According to the United States Census**

Kentucky	total	whites (%)	slaves (%)	free (%)
1790	73,077	61,133 (83.7)	12,430 (16.2)	114 (.2)
1800	220,995	179,871 (81.7)	40,434 (18.3)	741 (.3)
increase	202%	194%	225%	550%
Virginia				
1790	760,416	454,923 (59.8)	292,627 (38.4)	12,866 (1.69)
1800	900,295	538,500 (59.8)	346,671 (38.4)	15,124 (1.67)
increase	18%	18%	18%	17%
United States				
1790	3,929,214	3,172,006 (80.7)	697,681 (17.8)	59,527 (1.5)
1800	5,308,483	4,306,446 (81.1)	893,602 (16.8)	108,435 (2.0)
increase	35%	36%	28%	82%

Figure 4: Population according to the United States census. The increasing percentage of white Kentucky families who held slaves in 1790 was 16.9%; in 1792 it was 22.8%; and in 1800 it was 25.5% with the statewide average number of slaves held in slave-holding families at 4.39.<sup>299</sup>

<sup>296</sup> Coward, *Kentucky*, 52-3, 62.

<sup>297</sup> Friend, *Maysville Road*, 129; and Aron, “Pioneers and Profiteers,” 197.

<sup>298</sup> A. E. Martin, *Anti-slavery Movement*, 9.

<sup>299</sup> Byrd, Part I:191; Coward, *Kentucky*, 62-63; Lucas, *A History of Blacks*, xv-xvii.

Such a growing interest meant that Kentucky could not have become a free state, regardless of nascent antislavery sentiments. The sense of privilege, property, and prosperity had become deeply engrained in the proslavery voters of the convention. George Nicholas knew that and played on it. He argued that they did not have to forward the constitution to be ratified by a popular vote because they had been elected by committees to form the constitution. Nicholas knew that a popular vote might have rejected not only the articles on Virginia land titles, judicial and senate election, but the perpetuation of slavery in Article IX. The popular vote would have wanted those issues to come to the Legislature where everyone through his representative could debate them. Kentucky continued its existence as a slave state, ranked seventh in number of slaves in 1790,<sup>300</sup> for another seven years until the second constitution because of growing *interest* in what slavery meant. Brown argued that inclusion of slavery in the constitution might have been overturned because of popular opinion in 1792, but excluding slavery became “practically impossible at the time of the revision of the Constitution in 1799, by reason of the rapid increase in the number of slaves and in the wealth represented by them.”<sup>301</sup>

In this same vein, according to Byrd, the 12,430 slaves in the 1790 census of Kentucky were “valued at an average price of one hundred fifty dollars each” for a total wealth “worth over \$1,860,000.”<sup>302</sup> Nicholas would have known that no state could

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<sup>300</sup> Connelley and Coulter, *History of Kentucky*, II: 819.

<sup>301</sup> Brown, *Political Beginnings*, 230.

<sup>302</sup> Byrd, Part I:191. Out of curiosity, using the “unskilled wage index” from the footnote in Chapter Three, the total would be \$8,635,413,000, that is, the working value or earning potential of 1790 Kentucky slaves in 2009. Simple 2009 CPI would be \$451,354,200. If reparations were to be made, more research would be necessary on the relative value of the dollar, inflation, the slave’s gender, age, unskilled or skilled work possibilities, breeding possibilities, when the value clock would have started, how the slave would be identified, who would receive the reparations, etc. See Lawrence H. Officer and Samuel H. Williamson, “Measures of Worth” in “Seven Ways to Compute the Relative Value of a US Dollar Amount 1774 to Present,” 2010,

compensate slaveholders for that amount. Nicholas would also have known, as well his fellow planters, that there was no way they could replace this valuable labor. There were not enough white laborers even if planters could pay decent wages (and humor them and let them sit at the same supper table).<sup>303</sup> Moreover, as a state carved out of Virginia, the Fourth Enabling Act required that Kentucky assume Virginia's portion of the public (federal) debt for the district of Kentucky, a significant burden for a fledgling government with few resources except taxes on land and slaves.<sup>304</sup> Consequently, Kentucky would have had little option for immediate emancipation based on compensating owners. Its only options were gradual emancipation or becoming a slave state.

Byrd estimated that the increase of the enslaved to 40,343 in 1800 was a 224% increase while the white population increased nearly 194% in ten years.<sup>305</sup> The total population of the District of Kentucky was recorded at 73,677 inhabitants in the first U.S. census in 1790. Harrison considered it "an amazing increase" from the relatively few inhabitants of fifteen years earlier. Included in this increase was a tiny number of freed African Americans from 114 to 741, still comprising just .3% of Kentucky's total population in 1800 (see Figure 4). Moreover, slaves became more than just laborers; they were perceived as "valuable investments in themselves." As population grew, demand grew and the price of buying and selling slave property increased.<sup>306</sup>

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Oct. 7, 2010 <<http://measuringworth.com>>. My calculations are naive. For more insight, see the essays in Raymond A. Winbush, ed., *Should America Pay: Slavery and the Raging Debate on Reparations* (New York: HarperCollins, Publishers, 2003).

<sup>303</sup> Watlington, *The Partisan Spirit*, 189. She included a 1793 comment by a disgruntled planter who obviously disliked the penchant for equality afforded by the 1792 constitution.

<sup>304</sup> Harrison, *Kentucky's Road*, 80; Littell, *Political Transactions*, Appendix 33.

<sup>305</sup> Byrd, Part I:191.

<sup>306</sup> Deyle, *Carry Me Back*, 16 and Hudson, "Slavery," 261-262: for instance, in 1800 the average price of a "prime field hand" increased from \$350 in Richmond to \$400 in Louisville.



With slaves costing so much and the comparatively few freed African Americans concentrated in the cities, whites who could not afford to purchase slaves resorted to hiring them for seasonal or short term labor from their owners at a tenth or less of the asking price. Hudson concluded that slaveholders were thus lucratively compensated for their excess labor.<sup>307</sup> John Breckinridge, for instance, a driving proslavery force behind the 1799 constitution, regularly hired out his many slaves to clear land, mill corn, slaughter meat, or carry out many tasks of the agrarian cycle.<sup>308</sup> Slave hiring was common because obtaining and reciprocating neighborly help could not satisfy harvesting needs, for instance, because everyone needed the same help at the same time.<sup>309</sup> Slaves were cheaper to hire. Byrd agreed that the absence of cheap labor of any kind drove up the price of labor—except that white labor was thereby cheapened because rented slaves, requiring less support, were always less expensive. As a consequence, slaveholders became wealthier and white workingmen or farmers had to work harder and longer for their competence or even subsistence.<sup>310</sup> Soon, according to Aron, a small gentry class of hemp planters and thoroughbred horse breeders and racers had positioned themselves at the top of a pyramid of large tracts of land and large numbers of slaves.<sup>311</sup>

Rothman traced the galloping expansion of slavery in the west and south twenty years later and argued that greed was a motivating factor of the expansion of slavery into the new Deep South, the slave country of the future states of Louisiana, Mississippi, and

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Deyle, *Carry Me Back*, 27-28: owners and sellers recognized that the reproductive value of women increased their price.

<sup>307</sup> Hudson, "Slavery," 261.

<sup>308</sup> Hammond, *Slavery, Freedom*, 132; Coward, *Kentucky*, 49: in 1793 Breckinridge had 25; in 1800, 65; he usually owned 20,000 acres of land for development and/or sale.

<sup>309</sup> Friend, *Maysville Road*, 117. See also Lucas, *A History of Blacks*, 100-102 for kinds of jobs slaves were hired to do and the procedure for hiring them.

<sup>310</sup> Byrd, Part II: 291.

<sup>311</sup> Aron, *How the West*, 127.

Alabama. He gave an example that was probably illustrative of what had happened in Kentucky. A certain Yankee from Vermont, Henry Hitchcock, a grandson of Ethan Allen, settled in the Alabama Territory. Hitchcock had believed slavery unnecessary since he knew from his own experience that white men could work in the heat of the south; however, “Hitchcock succumbed to the relentless social pressure to buy slaves and get rich.”<sup>312</sup> That was the point in Kentucky. According to Hammond, Northern families, like the Hitchcocks, “immediately recognized the great value of slave labor in the West.”<sup>313</sup> If one could acquire land and purchase or even hire slaves, he could quickly become wealthy and rise in social status.

The partisans of Kentucky, who opposed the ownership of large, undeveloped tracts of good land, who opposed the plantations and hemp farms, who opposed slave labor because it cheapened their own, began to succumb also to the dream of getting rich. The hope the partisans had had through 1784 was that unilateral inclusion as a state (the debate of the fourth convention) or outright independence for Kentucky (“the Spanish Conspiracy,” sixth convention) would result in the annulment of the Virginia land titles.<sup>314</sup> Though retired Virginia military, land surveyors, lawyers, and planters of the court and county parties possessed much of the good Bluegrass land by 1784, some land was for sale by Virginia or resale from speculators. Watlington implied that partisans “tended to leave the party as they acquired land under Virginia.”<sup>315</sup> Aron noted that as on other American frontiers and in Kentucky, “backcountry men, like better-capitalized

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<sup>312</sup> Rothman, *Slave Country*, 204. See also Craig Thompson Friend, “Work & Be Rich: Economy and Culture on the Bluegrass Farm,” *The Buzzle About Kentucky: Settling the Promised Land* (Lexington: The University Press of Kentucky, 1999), 125-151.

<sup>313</sup> Hammond, *Slavery, Freedom*, 133.

<sup>314</sup> Harrison, *Kentucky's Road*, 43-47.

<sup>315</sup> Watlington, *The Partisan Spirit*, 65-67.

gentlemen, were susceptible to unrestrained acquisitiveness when it came to possessing land.”<sup>316</sup> Once in possession of good land, it is likely that former small-farmer-partisans discovered that slaves became necessary for comfort, convenience, and outward manifestations of wealth,<sup>317</sup> especially if they were involved in hemp-farming where the heaviest concentration of slaves could be found.<sup>318</sup>

As a result, slave importation increased. Parish concluded that even before the period of 1790-1800 “the center of gravity of slavery in Virginia was moving westward”.<sup>319</sup> (See Figure 1, Chapter One) The expansion was initially slow in Kentucky because of economic conditions on the frontier: according to Sosin, there was less cash to pay for slaves. Slaveholders had to bring in their own before they could afford to produce enough exportable commodities to buy more.<sup>320</sup> Slaveholders were moving from the Chesapeake, the Valley of Virginia, and Maryland to and beyond the Alleghenies. It can be seen in Figure 4 that Virginia’s slave population increased by only 18%—that is, by reproduction because Virginia had officially stopped its Atlantic slave trading—while Kentucky’s increased 224%. According to Ira Berlin, “by the century’s end, slaves whose ancestors had worked the tobacco fields of the Chesapeake for a hundred years or more were growing hemp in Kentucky...” with “thousands of slave families dismembered and communities set adrift.”<sup>321</sup>

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<sup>316</sup> Aron, *How the West*, 182.

<sup>317</sup> Hudson, “Slavery,” 261-263.

<sup>318</sup> Hopkins, *A History of the Hemp Industry*, 4.

<sup>319</sup> Parish, *Slavery: History and Historians*, 19.

<sup>320</sup> Sosin, *The Revolutionary Frontier*, 174-5.

<sup>321</sup> Ira Berlin, *Many Thousands Gone: The First Two Centuries of Slavery in America* (Cambridge: Harvard University Press, 1998), 265.

With cash available and the need for slaves increasing, an internal slave trade began to thrive. Deyle has argued that an interregional slave trade was a fact of American life, not just during the antebellum period, but from Revolutionary days when Virginia started selling its surplus of slaves.<sup>322</sup> Similarly, Eslinger surmised that there was such a trade and market in early Kentucky. She gave an example in Knoxville of demand boosting price levels of slaves significantly: an adult male costing 70 pounds in Virginia would sell for a hundred pounds in Kentucky. Slaves, surplus in the east, could be brought in for personal use, if an oath were taken not to resell them; however, Eslinger was unable to determine how much of a deterrent the oath was, given the demand. Kentucky's non-importation of "merchandise" clause, actually referred to other states: immigrants from Virginia could still bring in surplus slaves for resale.<sup>323</sup> Finally, a potential buyer could look at copies of the *Kentucky Gazette* in 1792 and see ads for return of runaway slaves and sales of farms and other merchandise: dry goods, hardware, groceries and slaves—along with copies of the 1792 Kentucky constitution.<sup>324</sup>

**FIGURE 5: SLAVE WANT AD**

**WANTED**

To purchase a likely young Negro lad, between the age of sixteen and twenty, sound and healthy, and can come well recommended; for which a generous price will be given and the money paid in guineas: Any person that has such a negro to dispose of may apply to captain Walker Bayler, living at the horse shoe on Dick's River.

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*Kentucky Gazette*. Aug.12. 1790

**Figure 6. Reward for Runaway**

TEN DOLLARS  
**REWARD**

Ran away from the subscriber living in Mason County, a Negroe lad about seventeen years of age, five feet five or six inches high, well made, flat nose, broad mouth, his under lip is tolerable long, and pitted with small pox. I cannot describe his dress as he has stole a number of clothes since he has run away; Whoever takes up said lad and delivers him to me, or secures him in Washington jail, shall receive the above reward from me. Thomas Marshall

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*Kentucky Gazette*, July 11, 1792

<sup>322</sup> Deyle, "The Irony of Liberty," 61.

<sup>323</sup> Eslinger, "The Shape of Slavery," 8-12.

<sup>324</sup> *Kentucky Gazette*, May 26 and July 14, 1792, for instance. See also Karolyn Smardz Frost, *I've Got a Home in Glory Land: A lost Tale of the Underground Railroad* (Toronto: Thomas Allan Publishers, 2007) for a Canadian story of a successful escape to Toronto, via the underground railroad, from Kentucky in 1831 by Thornton and Lucie Blackburn.

Yet all white Kentuckians did not approve of slavery, nor did they accept the fugitive slave code. If they could not end slavery, they could end their participation in a slave state. Connelley and Coulter stated that many Kentucky owners of slaves, especially from Bourbon County moved to Ohio and freed their slaves rather than live in a slave state.<sup>325</sup> Faragher also noted that during the period 1787-1791 “thousands of antislavery Kentuckians departed in disgust.”<sup>326</sup> According to Hammond, ordinary white southern farmers migrated toward the Northwest Territory for a variety of reasons: they knew that slavery limited their opportunities for purchasing good land and finding good-paying work; they sought to escape the debilitating social effects of slavery; they were antislavery evangelicals; they just wanted to be left alone; they hated the aristocratic planters, and/or they hated the African Americans. Ohio promised them something a slave state could not: it was a place “where people respected labor and where prestige was not measured by the number of slaves a man owned.”<sup>327</sup>

Kentuckian Daniel Drake reminisced about his pioneer father’s own decisions about moving to Ohio. Leading up to the election of representatives to the 1799 constitutional convention, his father had been “impassioned” about the gradual abolition of slavery. “The discussions, public & private” were numerous, and the excitement ran... high ...” At the time his father and some of his neighbors talked about moving to the Ohio Territory and actually made an exploratory visit. However, Drake did not know exactly

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<sup>325</sup> Connelley and Coulter, *History of Kentucky*, I: 303.

<sup>326</sup> Faragher, *Daniel Boone*, 237. Though impossible to know his views, it seems Daniel Boone was not one of those leaving because of slavery. Daniel Boone left Kentucky in 1799 because of land disputes, the crowding he felt, and the lack of game to hunt. He wanted to live a life “undisturbed by the troubles of civilization.” Promised land in Spanish-controlled territory of Upper Louisiana on the Missouri if he led a group of immigrants, Boone did so, among them his son Daniel Morgan Boone and his four slaves, 274-277.

<sup>327</sup> Hammond, *Slavery, Freedom*, 126-128.

why they had not moved though he did say that his father was motivated to do so because of the “existence of slavery in Kentucky” and the “uncertainty of land titles.” Had the senior Isaac Drake moved his family to start over again, Daniel wrote that the resettlement would have required him to work again as a farmer’s son rather than go to medical school.<sup>328</sup>

Drake also wrote that his father was the only one of all the Jersey men who had immigrated to Kentucky who did not eventually purchase a slave. His uncle was next to last to submit. Detesting slavery, they had relied on their own selves, wives, and even the smallest children to make their farms successful. His father did hire a slave from time to time.<sup>329</sup> According to Aron, since large plantation owners had a surplus of slaves and they were willing to hire them out, planters gained support for slavery from non-slaveholding farmers and tenant farmers<sup>330</sup> who could use the cheap labor without compromising their principles.

Consequently, Kentucky became a slave state. Though abolitionists had tried to prevent slavery, their efforts in 1792 were like placing small logs across the road that a fully-loaded, oxen-drawn conestoga wagon lumbered down, wheels greased by racism, slaves chained in tandem. The passage would be bumpy for the big wagon, slaves might stumble, and abolitionists wring their hands, but this wagon, this juggernaut, this expansion of slavery, handled by an experienced drover, would not slow down on its way to a promised land.

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<sup>328</sup> Drake, *Pioneer Life*, 209.

<sup>329</sup> *Ibid.*, 207-208.

<sup>330</sup> Aron, *How the West*, 100.

**KENTUCKY: “THE BROKEN PROMISED LAND”<sup>331</sup>**

The slaves trailing the wagons into Kentucky fell between the two groups labelled by Berlin as the Charter Generation before the Revolution and the Plantation Generation of the antebellum south. Before the linkage of racism between blackness and slavery was “perfected,” there was a brief spark or promise of freedom and the possible transformation of slavery.<sup>332</sup> But it was snuffed out in Kentucky as racial lines were legislated and slave patrols haunted the night.<sup>333</sup> Kentucky failed the African American. By not expunging Article IX, Kentuckians opened the awful floodgates of slavery which were closed only at the cost of a Civil War. Thus, for African Americans it was democracy deferred. The promise of the *Declaration of Independence* was not for him. Kentucky’s constitution reinforced that.

Though the enslaved had not been invited to participate in democracy and its blessings, Harrison repeated what would become a common excuse for slavery in the early nineteenth century: “Kentucky slaves were thought to lead a better life than those in any other state; and with their handicaps slaves were probably better off in bondage than if freed.”<sup>334</sup> Three months later, Governor Isaac Shelby (holding 28 slaves in 1792<sup>335</sup>) said in his inaugural address to the full Legislature: “Your humanity as well as your duty, will induce you to pass laws to compel the proper treatment of slaves, agreeable to the direction of the constitution.”<sup>336</sup>

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<sup>331</sup> Ibid., 4.

<sup>332</sup> Berlin, “Coming to Terms,” 10. See Kaminski, *A Necessary Evil*, 243: “The American Revolutionary era was a time when slavery might have been abolished peacefully without dismembering the Union... Tragically, by 1787, this unique chance to rid America of slavery vanished.”

<sup>333</sup> Friend, *Maysville Road*, 85.

<sup>334</sup> Harrison, *Antislavery Movement*, 38.

<sup>335</sup> Byrd, Part I:202.

<sup>336</sup> Thomas Clark, *The Voice of the Frontier: John Bradford’s Notes on Kentucky* (Lexington: The University Press of Kentucky, 1993), 170; *Kentucky Gazette*, June 9, 1792.

Meanwhile, the slave code of Virginia remained in place until the legislators put together their own restrictive laws, which, according to Barnett, “provided relatively light punishment of slave crimes... made manumission an easy process...” with provisions “generally interpreted and enforced liberally.”<sup>337</sup> If Kentucky were to be a more humane place, slaves would have to wait for it because Kentucky would seem no different from Virginia. The same laws meant that initially the same lack of freedom, the same restrictions, the same punishments, and virtually the same labor prevailed. After plodding the many miles to and through the Cumberland Gap or poling down the hazardous Ohio River to reach a “promised land,” a land that promised “humane treatment,” they would be disillusioned. For them, it was still Virginia.

Moreover, even some traditional historians questioned the “humane treatment.” Eminent Kentucky historian Thomas D. Clark noted that the limestone slab rock fences, some still visible two hundred years later, all up and down the Bluegrass were built by slaves performing “Herculean tasks of drudgery.”<sup>338</sup> Drudgery alone may not have been inhumane, and, according to Lucas, food, clothing, and slave quarters might have improved with the general prosperity of the farm, but whippings, branding, chaining, neglect, cruelty, abuse, and violence continued without legal redress. Pass restrictions for slaves, curfews, and night patrols restricted movement; but it was possible to have some representation in a court of law if accused of murder. Social isolation on a small farm in the backcountry was terrible and prevented adults from mingling and marrying. Worst of all, after the turn of the century, slave families could be traumatically separated as excess

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<sup>337</sup> Barnett, “Virginians,” 236.

<sup>338</sup> Thomas D. Clark, *Kentucky, Land of Contrast* (New York: Harper & Row, 1968), 109.



labor (that is, their offspring) was sold south.<sup>339</sup> In fact, the internal need for slave labor lessened so much in the state that Kentucky would eventually, and infamously,<sup>340</sup> become a big market for slaves sold south.

In *The History of Kentucky*, published in 1812, Marshall summarized the “new” slave codes of 1792-1798. The laws started with simple depersonalization of the slave since buying and selling a slave required “a written permit descriptive of the article.” Without the permit, there was a fine—and, *for being sold*, the “article” would receive ten lashes too. Ten lashes on a bare back was a small penalty; there could be twenty, or thirty, or thirty-nine—“well laid on”—or death with compensation paid to the owner. The code continued by making the children of slave mothers slaves for life. And to make things clear, identical to the Virginia slave code,<sup>341</sup> Section 28 stated that “All negro, mulatto, or Indian slaves... shall be held, taken and adjudged to be real estate...” Marshall concluded with his own disgust that the “negro” was not considered a citizen, and was, therefore, without inalienable rights, though he might be a man. Yet, these were laws liberally interpreted that led to the “better” bondage of Kentucky slaves, for, as the sharp-tongued, critical Marshall commented ironically, “moderate chastisement, by stripes, is not considered ill treatment.” Marshall published the code and his commentary in his

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<sup>339</sup> Lucas, *A History of Blacks*, 29-33. Contending that the conditions of bondage were still heinous, Lucas concluded that slavery was less harsh because there were fewer huge plantations, most slaves worked side-by-side with their yeoman farmer owners—and the seven-hundred-mile border with the Ohio made freedom so tempting unless they were better treated, 42-42 and 50. See also Friend, *Maysville Road*, 228.

<sup>340</sup> See Harriett Beecher Stowe’s *Uncle Tom’s Cabin* which, in 1853, would provide a heart-rendering scene of separation as Tom was sold to pay Shelby’s debts and ended up beaten to death at the hands of Simon Legree.

<sup>341</sup> Henig, *The Statutes*, II:288: “All negro, mulatto, and Indian slaves, in all courts of judicature, and other places within this dominion, shall be held, taken and adjudged, to be real estate and shall descend unto the heirs and widows of persons departing this life, according to the manner and custom of land of inheritance, held in fee simple.”

*History* so that America and the world could see what Kentucky had legislated for its slaves, “an unfortunate and degraded class of the human race” who had no share in their own legal history. As far as he was concerned, Kentucky would not be hiding its treatment of slaves however “much relaxed” it was “in the execution.”<sup>342</sup>

Rather than crushing their freedom, Kentucky should have offered African Americans the promise of a “new rebirth,” “a promise of new opportunities.” These are the century-old, hypothetical, and since discredited, words of Frederick Jackson Turner who wrote that settling a frontier provided Americans with a “perennial rebirth,” a promise of “new opportunities... Little by little [settlers transformed] the wilderness... and produced a new product that is American.” From a Turner’s mythological sense of “frontier individualism” came democracy and universal suffrage.<sup>343</sup> But when and if democracy truly happened on the frontier, it was for the free white man. Even if African Americans had cleared the forests of the frontier, built the farms, and developed the remarkable qualities of the new American, Turner dismissed slavery only as an “incident” in American constitutional history.<sup>344</sup> Turner failed to see that a pioneer like Monk Estill, freed because of his heroic service to the pioneer community, was denied

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<sup>342</sup> Marshall, *The History of Kentucky*, II: 66-70 and 244. See also William Littell and Jacob Swigert. *A Digest of the Statute Law of Kentucky* (Frankfort, KY: Kendall and Russell, 1822), Sept 20, 2010 <[http:// books.google.ca](http://books.google.ca)> II: 1149-1167 for all the laws and judicial decisions regarding slavery in Kentucky from 1798 through 1819.

<sup>343</sup> Frederick Jackson Turner, *The Significance of the Frontier in American History* (1893) (Ann Arbor, MI: University Microfilms, Inc. 1966), 199-201.

<sup>344</sup> Turner, *The Significance*, 217. For more on Turner’s misunderstanding of Kentucky, see Stephen Aron, “The Significance of the Kentucky Frontier,” *Register of the Kentucky Historical Society* 91.3 (Summer 1993), 299. Aron cited the attacks on Turner who had praised the Kentucky constitution as a victory of democracy over planters because enabling free white males to vote fit his thesis. Turner failed to understand that the democratic “mob” had been effectively checked by the conservative controls instituted by a landed gentry. For additional criticism of Turner see Henry Nash Smith, “The Frontier Hypothesis and the Myth of the West,” *American Quarterly* 2.1 (Spring, 1950), 3-11; and Warren R. Hofstra, “The Virginia Backcountry in the Eighteenth Century: The Question of Origins and the Issue of Outcomes,” *The Virginia Magazine of History and Biography* 101.4 (October, 1993), 485-508.

property rights by that very democracy whom he helped save. Reborn as a free man he was still denied citizenship, denied the right to vote, denied education for his children.

Denying African Americans freedom in 1792 also meant denying the vast majority of them the independence that came with the opportunity of owning their own land—if Aron’s “homestead ethic” applied: four hundred acres being generally agreed to provide a competence though half that amount would provide subsistence.<sup>345</sup> David Rice had protested slavery because it also robbed the slave of his “capacity of acquiring and possessing” property.<sup>346</sup> By keeping slaves and freed African Americans economically bound, whites eliminated the competition for land from an energetic people who knew how to work land in all hours and in all climates.<sup>347</sup> Lucas reported stories of energetic and self-sacrificing slaves—if they could work on their own garden plots, for instance, and profit from the pennies earned. Slaves had acquired all the skills of farming, blacksmithing, carpentering, and all the artisan and trade occupations. They learned from being told what to do, being forced to do it, and watching their masters. They made money from being hired out and possibly sharing in a few pennies while their masters earned pounds.<sup>348</sup> Yet pennies could not buy increasingly expensive land in Kentucky. A free man like Monk Estill had to be sponsored and partially supported by the son of his former master.<sup>349</sup> According to Schweninger, recognizing the importance of property

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<sup>345</sup> Aron, “Pioneers and Profiteers,” 193.

<sup>346</sup> Rice, *Slavery*, 4.

<sup>347</sup> Mason, *Slavery and Politics*, 17; Berlin, *Many Thousands Gone*, 237; Loren Schweninger, *Black Property Owners in the South, 1790-1915* (Urbana: University of Illinois Press, 1990), 13-25.

<sup>348</sup> Lucas, *A History of Blacks*, 2-7 and 49.

<sup>349</sup> John E. Kleber, “Estill, Monk,” *The Kentucky Encyclopedia* (Lexington: University Press of Kentucky, 1992), 298.

ownership, free African Americans acquired land as soon as they could and passed it on to their progeny.<sup>350</sup> Slavery in Kentucky kept this empowerment under wraps.

#### **DAVID RICE AND GEORGE NICHOLAS TO 1799: WHAT THEY LEARNED**

Moving to the Ohio Territory and keeping blacks in legal chains were just several of the discussions which plagued Kentucky politics during this period immediately after the 1792 constitution. Though content with the right to vote without qualifications except residency, partisans did not get the Virginia land title claims overturned nor did they get the issue of slavery off the table. According to Young, between 1792 and 1799 “in the politics of Kentucky... the spirit of emancipation again [made] itself manifest and aggressive.”<sup>351</sup> From this period throughout its constitutional history, Frank F. Mathias discussed the terrible impact of “the black dye of slavery” which stained every discussion in Kentucky politics, reaching a point by the third constitution in 1850 that freedom of thought and civilized argument were impossible.<sup>352</sup>

The seven-year run up to the 1799 constitution convention pitted David Rice and George Nicholas against each other again. This time there was the more physical and vocal help of proslavery John Breckinridge, brother of the Robert Breckinridge of the 1792 convention, and the antislavery voice of Henry Clay. Of the former debaters, David Rice had become more seasoned. In 1792 after delivering his speech on *Slavery, Inconsistent with Justice and Good Policy*, Rice withdrew from the convention in frustration; however, he continued as a leader in the Presbytery of Transylvania. In 1794

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<sup>350</sup> Schweninger, *Black Property Owners*, 11-17.

<sup>351</sup> Young, *History and Texts*, 40.

<sup>352</sup> Frank F. Mathias, “Slavery, The Solvent of Kentucky Politics,” *Register of the Kentucky Historical Society* 70.1 (Jan. 1972), 1 and 14.

his church resolved to teach the slaves of its members to read in preparation for emancipation. In 1794 it recommended that members free those slaves who were ready to support themselves as free men and women. However, in 1795 the Presbytery recognized that continued discussions of slavery were agitating the minds of its members. Then in 1796, the church recognized the great evil of slavery but could not make non-slaveholding a condition of receiving communion. Finally in 1797, the Presbytery admitted it was unable to determine who was guilty of moral evil for holding slaves and decided to defer emancipation as a civil matter.<sup>353</sup>

Meanwhile, a more moderate David Rice worked to organize a better attack on slavery through abolition societies in Kentucky and the larger American Convention of Delegates of Abolition Societies on the Atlantic Coast. A. E. Martin regretted that nothing much in the form of minutes or printed matter has been found about these abolitionist society efforts, but the emancipation issue did receive considerable attention in the *Kentucky Gazette* as the 1799 convention loomed nearer.<sup>354</sup> Rice continued to attack the “moral evil of slavery,” but he began to experience strong resistance from Mercer county delegates and parishioners to his entering into the politics necessary for abolishing it. By 1797, according to Coward, he himself was treading carefully in the political terrain and decided that maintaining a “low profile would be safer and more productive.” Coward quoted a letter Rice wrote in 1797: “An abolition society might alarm the slaveholders so that “the friends of equal Liberty by making a premature

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<sup>353</sup> Martin, *Anti-slavery Movement*, 22-23.

<sup>354</sup> Martin, *Anti-slavery Movement*, 25-26. For example, see Henry Clay’s letter about the evils of slavery which deprive the slave of inherent rights and make masters indolent. He advocated gradual emancipation in the *Kentucky Gazette*, April 25, 1798.

exertion, might loose their influence in the election... or in the Convention itself.”<sup>355</sup> His low profile resulted in few antislavery votes. Coincidentally, as he withdrew before the 1792 vote, in 1798, disheartened,<sup>356</sup> he moved away from Danville in Mercer-Lincoln County, where there were 752 slaveholders, to a pastorate in far away Green County where there were only 220 slaveholders and where he remained quietly abolitionist.<sup>357</sup>

According to Ford, though there had been seven ministers in the 1792 convention, only three were elected in 1799 with one of those spouting a biblical defence of slavery. That there were only four outright emancipationists—who did not agree on how and when to free slaves—of fifty-five members of the convention indicated the increased presence of slavery and slave ownership in Kentucky and the influence of George Nicholas and John Breckinridge.<sup>358</sup> The majority vote was proslavery at 37-14.<sup>359</sup> As a result, the second constitution incorporated into its Article VII virtually the same clause and language of Article IX of 1792. After their defeat, critics of slavery retreated for a while from politics in Kentucky.<sup>360</sup>

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<sup>355</sup> Coward, *Kentucky*, 67.

<sup>356</sup> From David Rice’s “Memoirs” and commentary by Bishop, *An Outline*, 66-68 and 78: Rice said he had left Kentucky after his first 1783 visit without purchasing land because he was disgusted with irreligious, greedy speculators. Conditions in the churches, the attitudes of the parishioners, the non-spiritual revivalism of fellow ministers, and the failure of the church to pay his salary filled him regularly with “deep melancholy.” He struggled with his anger by removing himself from the perceived cause and becoming gloomy. He said he moved to Green County because his “constitution was considerably weakened” and he “felt a disorder in his head.”

<sup>357</sup> V. Martin, “Father Rice,” 327-328. Interestingly, Martin did not discuss Rice’s abolitionist activities nor develop anything about either constitutional conventions. There is no reason given for Rice’s move to Green except that he had had a heavy load to carry in Danville. The only thing V. Martin found worth mentioning before Rice’s move was that Rice had been “a very strong advocate of total abstinence from alcoholic beverages.”

<sup>358</sup> Coward, *Kentucky*, 49: Kentucky Attorney General at the time, former U.S. House of Representatives, then Kentucky House of Representatives and Speaker in 1799.

<sup>359</sup> See Coward, *Kentucky*, for a full discussion of the makeup of the delegates and a factor analysis of the various viva voce votes, 126-139.

<sup>360</sup> Ford, *Deliver Us*, 44; Martin, *Anti-slavery Movement*, 31; Aron, *How the West*, 89-95.

As for George Nicholas, he died three days before the convention; therefore his voice was missing during the debate of the second constitution. Before the convention, he had worked hard with Breckinridge to argue in public meetings and through the *Kentucky Gazette* that there was no need for constitutional convention because the vote for one was first decided by the residents of each county, the majority of whom were partisans still opposed slavery and interested in a direct rather than electoral vote to elect senators, in the setting of land claims, and/or the redistribution of land. However, once a convention had been determined, he was equally instrumental in securing the proslavery vote by working behind the scenes to influence and even select candidates to run as representatives to the convention.<sup>361</sup> He had developed a five-point program which compromised on issues of direct election but not on original Virginia-legislated landholdings and not on any form of emancipation without consent and compensation: the first tenant was “no emancipation either immediate or gradual.”<sup>362</sup>

John Breckinridge worked with his colleague Nicholas in defending slavery and took over as the focal point of conservative politics and the leader of the gentry. He helped organize a widely attended, preconvention meeting of a variety of possible candidates—town and gentry—for the constitutional convention and had them swear that “I do declare that in case I am elected to the Convention, I will be decidedly opposed to an emancipation of the slaves, either immediate or gradual without paying to the owners thereof their full value in money, previous to emancipation.”<sup>363</sup> The result, Martin argued,

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<sup>361</sup> See Coward, *Kentucky*, 118-123 for an analysis of the politics behind the county committees and elections of representatives to the convention.

<sup>362</sup> Aron, *How the West*, 94; Coward, *Kentucky*, 117. Martin, *Anti-Slavery Movement*, 29.

<sup>363</sup> Martin, *Anti-Slavery Movement*, 29. Quoting from a speech of John Breckinridge.

was the election of a majority of conservative proslavery candidates more concerned with preventing “radical action against slavery than in perpetuating the institution.”<sup>364</sup>

The constitutional convention was concerned with more than emancipation, however. But regarding slavery, John Breckinridge, in an exchange of letters in the *Kentucky Gazette*, countered by Henry Clay, tried to frighten the populace about having their slaves taken away by dangerous emancipationists. He was accused by Clay of discrediting the emancipationists by asserting that their hidden agenda was really redistribution of lands. Only twenty-one, Henry Clay exhibited political skills which would make a future impact on the slavery debate in the United States. For now, the “firebrand” Clay spoke out against slavery: he argued for the advantages of emancipation or, at least, the modification of Article IX to allow the legislature to decide the matter rather than be tied by the constitution. Afterwards, as Clay grew in experience and wealth as a “hemp-raising, horse-breeding, slaveowning planter with six slaves in 1804,” he shifted his views to gradual emancipation after education. Later he would advocate deportation of free blacks.<sup>365</sup> As a result of the political management of Nicholas and Breckinridge, proslavery was successful once again and the well-meaning but disorganized forces of Rice and Clay were pushed aside. Antislavery as a political force subsided. The travail of African Americans continued; even freemen were now denied the vote as of 1799. Their “all free male” suffrage status of 1792 was changed to specifically prohibit “all negroes and mulattoes” from voting.<sup>366</sup>

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<sup>364</sup> Ibid., 30

<sup>365</sup> Aron, *How the West*, 95-99; see Martin, *Anti-slavery Movement*, 26-29, for a summary of the exchange in the *Kentucky Gazettes* of April-May, 1798; also Coward, *Kentucky*, 107-115.

<sup>366</sup> Second Constitution of Kentucky, II, 8.



**CONCLUSION: “A DREAM DEFERRED”<sup>367</sup>**

Having traced the historiography of the origins of slavery in America, Parish concluded that “some historians... have seen the Revolution as a great missed opportunity to get rid of slavery, but in fact there never was much likelihood that such an opportunity would have been widely perceived, let alone seized.”<sup>368</sup> Some national leaders had wished that slavery would go away, but slavery became protected by the very constitution which protected the liberties of white men. Some national leaders and slaveholders had thought slavery would die of natural causes, but slavery began to expand in the days of the early republic. Moreover, though slavery had been expanding in accordance with national debate, in Kentucky slavery expanded as a local decision because the creation of a constitution for Kentucky was not a federal decision. Kentucky had been under Virginia’s jurisdiction until it became a state and was governed by Virginia’s laws until the Kentucky legislature enacted slave laws of its own.<sup>369</sup> The expansion of slavery in Kentucky was a local decision, one which supports Rothman’s conclusion that America’s “slave country” emerged not only from global forces or government policies but from “countless small choices made by thousands of individuals in diverse stations of life.”<sup>370</sup>

There had been forty-two Kentuckians of diverse background—small farmers, landless men, business owners, ministers, planters, lawyers, future state officers—who

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<sup>367</sup>Langston Hughes, “Harlem,” *Montage of a Dream Deferred*, 1951: “What happens to a dream deferred?/ Does it dry up/ Like a raisin in the sun?/ Or fester like a sore--/ And then run?/ Does it stink like rotten meat?/ Or crust and sugar over--/ like a syrupy sweet?/ Maybe it just sags/ like a heavy load./ Or does it explode?”

<sup>368</sup> Parish, *Slavery: History and Historians*, 18.

<sup>369</sup> Consequently, since, according to Virginia law, the issue of the slave mother was bound in perpetuity, a slave might exclaim that “Ole Maamy ‘Jinia done bon ‘ese’f a Caintuck slabe chile on duh buckruh massa!” See “Gullah Words and Dictionary,” October 7, 2010 <<http://www.gullahtours.com>>.

<sup>370</sup> Rothman, *Slave Country*, xi.

met in April, 1792, and made their own small choices which resulted in a 26 to 16 decision for making slavery permanent in Kentucky, hence encouraging its expansion. In 1799 the vote margin was higher: 37 for, 14 against. Neither constitution was ratified by the people. The constitutional protection of slavery would prohibit the Legislature from abolishing slavery or emancipating slaves without a struggle to vote on an amendment.

Therefore, slavery expanded in Kentucky in spite of earlier conditions on the frontier which had tended toward self-reliance and equality and favored the development of democracy without slavery.<sup>371</sup> Coward concluded that, in the 1790s, slavery in Kentucky had faced the sharpest challenge anywhere in the South. Kentucky had appeared to offer a chance for emancipation.<sup>372</sup> A large majority of Kentuckians did not own slaves and did not favor slavery; a minority of them expressed antislavery sentiments. However, an influential minority of slave owners managed to influence the constitution, control the legislature and govern the state. The antislavery forces were nascent and unorganized in comparison to the carefully managed politics of proslavery politicians. Consequently, the right to hold slaves as property in Kentucky was guaranteed constitutionally in 1792 and affirmed in 1799.

David Rice, a minister who preached his message but not a politician seasoned by debate, had tried to open the eyes of slaveholders to the injustice and inhumanity around them. He had tried to lift the debased slave to a level of equality and freedom as an African American with rights of citizenship. He had presented a plan for gradual emancipation after education to overcome the debasement of slavery. But he had failed. Though there had been a clamor of voices expressing the disadvantages and immorality

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<sup>371</sup> Martin, *Anti-slavery Movement*, 12.

<sup>372</sup> Coward, *Kentucky*, 164.

of slavery, there was no other spokesman for the majority at the time: Harry Innes had been seated too late to influence the 1792 convention, and young Henry Clay was still politically inexperienced in 1799. Hammond argued that Kentucky's antislavery evangelicals failed because slavery had already gained too strong a foothold.<sup>373</sup> They also failed because their opponents were better organized and proved more able to control the very political decisions affecting the future of slavery.

The eloquence of Rice's moral argument was matched by one of mammon. George Nicholas had argued that there was the legal principle of property and it involved compensation; his listeners, accustomed to slavery, paid more attention to their prosperity, their prejudices and fears, than to morality. Parish argued that Southern slaveholders considered their liberty at stake when the essential economic underpinning of slavery was threatened.<sup>374</sup> Nicholas, therefore, skilled debater and politician that he was, succeeded because he would not compromise on slavery. Consequently, the vote for the bad policy of constitutionally protecting slavery would perpetuate injustice for African Americans until the 13<sup>th</sup> Amendment in 1865. The majority of Kentuckians did not agree with slavery, but the minority who did agree managed to create a slave state for all. Kentucky, thus, constituted an important first stage of the westward advance of slavery in the United States.

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<sup>373</sup> Hammond, *Slavery, Freedom*, 12.

<sup>374</sup> Parish, *History and Historians*, 135.

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