Juneteenth: Tracing the Origins and Significance

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[00:00:00] Tanaya Tauber: Welcome to Live at the National Constitution Center. The podcast sharing live constitutional conversations and debates hosted by the Center in person and online. I'm Tanaya Tauber, Senior Director of Town Hall Programs. This week, the Center held a two-day celebration for Juneteenth, the annual commemoration of the end of slavery in America in 1865. Long celebrated by black communities across the United States, Juneteenth became an official federal holiday in 2021. One of the events hosted by The National Constitution Center was a conversation with William B. Allen of the Center for Urban Renewal and Education and Hasan Kwame Jeffries of the Ohio State University, exploring the history and meaning of the holiday, its connection to July 4th, the declaration of independence and the emancipation proclamation and more. Jeffrey Rosen, President and CEO of the National Constitution Center moderates. This conversation was streamed live on June 20th, 2022. Here's Jeff, to get the conversation started.

[00:01:04] Jeffrey Rosen: Hello friends, welcome to the National Constitution Center and to tonight's convening of America's Town Hall. Thank you so much for joining, uh, Professor Allen and Professor Jeffries. It's such an honor to welcome both of you. And I will begin by asking the obvious question, what happened on Juneteenth and why do we celebrate it, uh, Professor Allen?

[00:01:26] William B. Allen: Well, I would ask you to refer to Professor Jeffries to tell that story, because I believe he can give you a well, complete account.

[00:01:33] Hasan Kwame Jeffries: Well, on June 19th, 1865, uh, in Galveston, Texas, the Union General Gordon Granger, uh, lands and with a, and this is important, with a fighting force of 2000 union troops. Uh, and he delivers the, the good news that African Americans and slaved African Americans had been waiting for, uh, not just, uh, for two years, not just for five years, but for many generations, uh, that they were in fact free. Uh, that slavery was over that the civil war had ended, that the emancipation proclamation was in full effect. Now, of course, on, uh, June 20th, there were still enslaved Africans, uh, in Texas. It took a while for the union, uh, forces to make their way through Texas. There were still enslaved African Americans, uh, in, uh, states that hadn't seceded. Uh, so you still had enslaved African Americans in, uh, in Delaware and in Kentucky and it would take until the 13th amendment, uh, to be ratified before we're really at that point saying at the end of 1865, December 6th, 1865, uh, that, uh, slavery in America was officially over.

[00:02:47] But Juneteenth represents, um, and, and, and there's a long history between, sort of, Juneteenth celebrations and, and, and when we get a federal holiday. I think Juneteenth, sort of, represents the emancipation moment, uh, that is celebrated in African American communities for generations at different times, uh, depending upon where you were in the country. In Texas, it's Juneteenth, uh, you know, in many places outside of the south, it would be January 1, Emancipation Day. The day the emancipation proclamation goes into effect, we would see that in those watch night services. Uh, in other places, Massachusetts would celebrate December 6th, uh, for quite a while the day the, uh, 13th amendment goes into effect, Washington, D.C., uh, into the present would celebrate their emancipation, uh, day in April, uh, every, every year.

[00:03:34] Uh, and then of course, by the time you get to the turn of century, people are celebrating emancipation on Lincoln's birthday, uh, which would occur in, in, in February. So, you know, there are, there are different social and cultural reasons why Juneteenth, sort of, emerges most recently as the, the national holiday, the, the, the, the moment where we will mark emancipation. But I think, uh, the best way to, sort of, look at it beyond, sort of, that, the, the historical, the component of, like, well, not, everybody's still free. Most people are, but that this is just, sort of, marking the emancipation moment, uh, when we, as a nation should be coming together for the first time and recognize the historic significance of ending slavery in America.

[00:04:18] Jeffrey Rosen: Thank you so much for that wonderful introduction to the story of Juneteenth and for helping us understand that on June 19th, 1865, Mayor Granger issued a general order. I, I'll now quote from it, "The people of Texas are informed that in accordance with a proclamation from the Executive of the United States, all slaves are free." And newspaper accounts of the general order indicated the words all slaves were emphasized in italics. Professor Allen, Professor Jeffries talked about Juneteenth as the emancipation moment and offered a series of other dates that have been celebrated including January 1st, when the proclamation went into effect, December 6th, when the 13th amendment went into effect and Lincoln's birthday in February. Do you think Juneteenth is the best day to celebrate emancipation, or if you have to pick another one, what would it be?

[00:05:05] William B. Allen: I would prefer to think about this from the perspective of exactly what is being celebrated and rather than what the date should be. Uh, and the reason I wanted Professor Jeffries to go first is because I learned about Juneteenth a long, long time ago. Back in 1963, 64, when I was a student in California and a young, recent graduate from Texas from Beaumont came up and we became roommates and the best of friends. And he related to me the Juneteenth celebration and all the reasons for it. So I have been fully apprised of this now for over 50 years. And, and I always considered it as he did too, as something of a joke, because what it reflected was the backwardness of East Texas. But it was not the case that elsewhere in the country, those who had been enslaved required to actually see federal troops to hear the news.

[00:05:59] They heard the news in many of the other states that were in rebellion and they celebrated it already. And many of the states that were in rebellion, because the real question here is, what is being celebrated? Is it a specific day, or is it a moral accomplishment? And I would submit that if you're going to recognize the moral accomplishment in its full grandeur, the

important thing for us to do would be to celebrate it on the date at which the proclamation was issued. Remember that it was already telegraphed in September of 1862, the commitment was made. Do this, or I go to do that. January 1st came that that fell, the other shoe fell, and that had a resounding effect in the country. No, it did not emancipate all slaves, it specifically excluded those in the non-rebellious states. But it excluded them in a process that certainly envisioned their eventual freedom as well.

[00:06:59] And so what, what we're talking about is a moment at which the dynamics of political and social development in the United States as a country reached the pivotal point at which a commitment to freedom was made and publicly proclaimed. That's to be more important than when any particular slaves heard the news. It is the case that for 155 years, Nace's day has been celebrated, it trapped Maryland on the Eastern shore to celebrate emancipation. So Professor Jeffries is right. People have for a long time done this and that particular celebration has gone on consistently for 155 years. So the question is, what should emerge as giving a stamp of national recognition? Is it the moment which was essentially fairly parochial in East Texas, or should we look for a broader national platform? That would be my response.

[00:07:59] Jeffrey Rosen: Fascinating. Professor Jeffries, what do you, what do you think of Professor Allen's suggestion that the time that the emancipation proclamation is a better moment to celebrate the commitment to freedom than, uh, Juneteenth?

[00:08:13] Hasan Kwame Jeffries: Well, I think it, it, it depends on how we view the emancipation proclamation. Uh, and I have a, uh, uh, I, I think I might be a little bit more critical, uh, of what the emancipation proclamation, sort of, means and how it has been interpreted. And of course, as Dr. Allen points out, I mean, no one is freed by the emancipation proclamation. It is absolutely a, a critical moment, uh, in American history, setting the nation on a course towards liberation. Uh, but for too long, uh, we have celebrated the great emancipator, right? Lincoln as the great emancipator and not looked at, uh, the aspects of the emancipation proclamation in terms of, you know, people at East Texas, they didn't receive word. Well, I think we could say the same thing Dr. Allen, that, okay, the emancipation proclamation goes into effect, well, how come black folk in the states of rebellion didn't just simply walk off their plantations then.

[00:09:03] And, and that is because they understood that they couldn't, right? Uh, be- because you still had, uh, the force and the effect of the Confederacy and enslavers maintaining, uh, control over these areas. Uh, and so I, I don't think it's, and I think we can't divorce, uh, the fact that, yeah, it takes, you know, uh, you know, the, the Union Army, Union Army to show up, uh, in Texas to say, Hey, you know, things have now changed and we're here to make sure that they are, but rather than just, these are black folks sitting around, like, ah, we just didn't receive word. Like, I think pretty much everybody knew, you know, what the Union Army, what Lincoln had done, it's just a question of, can it go into effect? Uh, and so, you know, in those places, you know, in, in, in Boston and in Philadelphia, they're, they're excited about the emancipation proclamation.

[00:09:50] They're disappointed, obviously they understand that there's limits to it. They're not freeing those places where Lincoln actually had the power to free people where he had, you

know, those states that were not in rebellion, but they understand that pivotal turn. Uh, and so, you know, I, I, I, I can, I can appreciate, you know, the importance and significance certainly of the emancipation proclamation. But I think Juneteenth offers something a little bit different. And I wouldn't be, and, and, and, and I'm not quite ready to set it aside, uh, in the sense that it, it, it's, to me, it's less about, sort of, waiting for word and more about a community of people, sort of, on June 19th, 1866, right, who are marking it on their terms. Uh, in 1867, June 19th, who are marking it in their terms.

[00:10:31] And so it is something that is more, that grows, sort of, organically out of the African American community saying that we are going to commemorate this moment on our terms, looking back and making sure that we never forget and remember the institution of slavery that we celebrate those who brought about emancipation and slaved African Americans working for their own freedom and liberation, and then also pausing, uh, uh, you know, to, to come together as a day of rest in a day of celebration. So I like the idea of a national celebration, a national holiday that's rooted in a, a, a moment that African Americans are defining for themselves rather than just, sort of, sitting back and saying, Hey, okay, you know, somebody that, you know, the, the great, the great white hope, uh, has, has, has spoken, uh, and therefore, uh, we are all, father Abraham has spoken and, and out and out to freedom we went.

[00:11:26] Jeffrey Rosen: Wonderful discussion. Professor Allen, uh, so eager for your response to Professor Jeffries' suggestion that it's worth celebrating Juneteenth, 'cause it was when African Americans celebrated freedom on their own terms, as opposed to celebrating the great emancipator who was not able to emancipate, uh, many enslaved people without the force of the Union Army, uh, which also leads to your reflections on Lincoln's constitutional legacy, which you've written about so powerfully in pieces, including your article on to preserve, protect, and defend the emancipation proclamation itself.

[00:11:58] William B. Allen:I was to say that there were so very much conveyed in Professor Jeffries' remarks that it would be difficult for me to give you a full response to them. But I want to start at the very top. Uh, I think that what's involved here is a case of overgeneralization. And I'll explain what I mean by that. Uh, I think that what professor Jeffries' argument actually amounts to is saying, the empirical reality is more important than the moral reality. And I will concede the empirical reality. There's no question about the various forms in which news spread and celebrations develop and many of them were spontaneous, which is I think what he means by organic. But they were spontaneous in different places and in different ways. So the question of what is organic is a different kind of question than what is spontaneous. I remember from John Adams on July 2nd, 1776, after everything was done he said, "This day will be remembered and celebrated in perpetuity," referring of course to the declaration of independence, and he was right.

[00:12:57] But it didn't emerge because it was declared to be a national holiday. It emerged genuinely organically and spontaneously spread across the country. In spite of the fact that there are people out in the lawless territory, the Ohio Valley and elsewhere who didn't hear about it for a long time thereafter. They're not hearing about it, did not make them less committed, involved and affected by it. Their dignity was as much a firm when they didn't hear about it, as was the

dignity of the persons who did hear about it. And so what I'm suggesting to you is this, it's very simple. The moral accomplishment is more important than the empirical reality because we are on the slight or thin precipice of asserting that might makes right. And it didn't matter what the moral reality was. It only mattered that the army was there, and the army could have forced and effectuate the decision, whether the decision were right or wrong.

[00:13:49] I submit it's more important that the decision were right. Even if it couldn't have been effectuated. And there are so many cases from whole of human history in which right principle failed because it couldn't be effectuated, but which didn't make it any the less right principle. And it is really important for a country like the United States, for us to put the celebration of principle above the celebration of the force of might. So, so I would say that in these various community expressions we see, there's perfectly good reason to celebrate, to be joyful, to appreciate, but if we ask ourselves what shall we put the stamp of national authority on, I would suggest very strongly that we make sure we accompany that national authority with moral determination and not merely empirical recognition. I would say something like Kwanza, which emerged spontaneously. Certainly. I mean, I knew Maulana Ron Karenga very well and the days when that was being formulated and I watched it spread throughout the country to the point that Hallmark would issue greeting cards.

[00:14:57] Of course it has since petered out. Why? Because it didn't have any real foundation. It's as simple as that. And that's when I say, when I say it's something of a joke. There's no real foundation there because you're not celebrating the moral principle. You're only celebrating the factuality of what happened in East Texas at that moment. And it didn't by the way become nationals, organically or spontaneously. It became national by an act of government. And that's always a treacherous thing. We should always remember. Acts of government cut, both ways. Organic developments don't cut both ways. What is truly organic will have staying power. What is merely positive law enforce will disappear.

[00:15:43] Jeffrey Rosen: Thank you so much for that. Uh, Professor Jeffries, what are your, your response to Professor Allen suggestion, that the moral reality is more important than the empirical reality?

[00:15:51] Hasan Kwame Jeffries: I would agree, but I think what we find in Juneteenth and with these, uh, emancipation, uh, cele- emancipation moments celebrations, uh, that emerge out of the African American community, various at, at various points in time, uh, that they are in fact reflecting a moral reality, right? I mean the moral imperative of African Americans to celebrate the moment of freedom. I mean, they're the ones who are saying that this is important. Like, our freedom, this transition from slavery to freedom is fundamentally important, not only to us, but to the nation as a whole. And so whether, however we choose to market, and I don't make a distinction between, you know, African American communities, churches celebrating January 1, Emancipation Day, Emancipation Proclamation Day, and, and, and those in East Texas. I think they're not so much celebrating, Hey government, we appreciate, you know, the, the, the vision that you have laid out for us but they're saying we ourselves are not only contributed to our, to our emancipation, but we ourselves are defining freedom.

[00:16:52] So I, I, I think for, for me, it's the celebration of freedom and the definition of it that African Americans are instilling in and exercising the actions that they're taking that is most important to me, uh, as opposed to the turn in the government, which obviously is critically important, right? I mean the commitment of the government to end slavery and to these principles, these, these, these moral legal principles are critical. But I, but this is the one celebration where it's, like, no, the people themselves are defining it. So, you know, this is, to me, this is John Adams, right? I mean, this is the people on the ground who were saying, this is important to us. It just happens to be black folk.

[00:17:29] Jeffrey Rosen: So interesting. I, I hear in this really important debate, perhaps some, uh, disagreement about the role of Lincoln and whether he deserves credit for, uh, for marking the moral moment that freedom took place, or whether African Americans on, on the ground, uh, deserve that credit. And, and Professor Allen, tell us about your challenging the view that Lincoln was dragged toward the emancipation policy and your argument instead that his commitment to preserving the union's purity on the slavery question, never willingly endorsing or extending the institution would sooner or later require emancipation. Tell, tell us about Lincoln's moral moment.

[00:18:08] William B. Allen: Well, let me just say in response to that. Uh, it seems that the important thing is who the people are. And, and what misses the heart an opportunity when one defines the people in segments and doesn't discover the way in which there are one people. At the, for the importance of the moral moment is to surface the reality of, at least the potentiality of one people. And that's the underlying term that we're discussing here. It goes to the question of Lincoln's efforts in developing the emancipation proclamation, which actually originated in the first Confiscation Act, uh, which he accepted, but it was first passed, but was not particularly thrilled about. And he was poised to veto the second Confiscation Act. Now, why was he poised to veto that? Because both Confiscation Acts were predicated upon identifying escape slaves or captured slaves as contraband. It's that simple. Contraband means property.

[00:19:08] Now it was normal procedure in international relations or international security affairs to say that when you capture property belonging to an enemy or to a criminal it becomes contraband. But that surfaced already in 1807, when we were borrowing the slave trade and they stumbled over the same thing back then. They couldn't treat the people who were being imported illegally as property at the same time as defending prohibiting the foreign slave trade. And that led to a crisis in 1807. Well, Lincoln was taking through exactly that issue as he approached the emancipation proclamation. And he had arrived at his decision to issue that, long before he announced it in September. He in fact, delayed it on the advice of his cabinet as early as late June, because they were afraid that it would seem desperate since the Union Army was in desperate circumstances at the time and they wanted to await a moment where they at least seemed to be on the verge of victory, which they got by September.

[00:20:09] So that calculating when to do a thing and calculating what to do, have to be brought together in some kind of synergy in order to make it effective. And that's the process they can work through at arriving at the emancipation proclamation. He wasn't pushed to that by newspaper publishers, or the other things he was receiving, the way of correspondence when

people were saying, why are you waiting? He was deliberating. He was being statesman like, finding the proper moment to strike when striking would make a difference in order to assure that the principle that was going be defended had a fair chance to be established. And I think what happens with the emancipation proclamation is precisely that he captures that fair chance. And that's what we're talking about. We're talking about the reality of social and political life.

[00:21:01] We're not talking about demonstrating, of striking a pose. We're talking about doing something that, uh, makes a real difference in the lives of people by surfacing those principles which have the strength and the integrity to well them into a genuine moral community. I think that's what animated Lincoln and that's why the announcement of the proclamation is worth defending, not, and celebrating. Not because it's the great white father, not because it was the government, not because it was non-black people, but because it was a way of pointing to the eventuality of one people who could live on the basis together of a strong moral principle.

[00:21:42] Jeffrey Rosen: Uh, Professor Jeffries, what is your response to Professor Allen's argument that Lincoln was acting out of principle, out of a view of the constitution as not explicitly endorsing slavery, uh s- uh, freedom, national, the slavery local, and his conclusion that despite the widespread view, Lincoln was compelled to emancipate the slaves, instead, Professor Allen argues that Lincoln's awareness of the requirement to preserve and protect the union's purity, led him to emancipation in the time and the fashion that he accomplished it.

[00:22:14] Hasan Kwame Jeffries: Well, I think it's, um, a couple points, uh, come to mind. I think we have to add to this conversation as we think about Lincoln and the emancipation and his decisions of when and what? Uh, certainly as he's pointed out, um, Dr. Allen points out, um, you know, he could have just, you know, said, "We're gonna enforce the Confiscation Act." But you're absolutely right. I mean, this is the question of property and not humanity. Uh, and so the, the principle of an emancipation, uh, certainly distinguishes it and sets it aside, uh, from what was already taking place in terms of the Confiscation Act. But I think, and I would love to hear how Dr. Allen adds this in, is that we can talk about the, the principles of what he was trying to do, but we can't forget about the military and political expediency, uh, for declaring a war, making this war about ending slavery.

[00:23:06] Uh, by the time we get to, uh, the end of 1862, and you're absolutely right, you know, we had the benefit of looking back and knowing the outcome, but it was undetermined. Uh, you know, the, the, the Confederacy didn't have to defeat the North, they just had to keep it from being defeated. Uh, and it was unclear, uh, if the North could pull that off, if the federal government could pull that off. And so when you get that Antietam moment, which is not a victory or a defeat, it's, kind of, a holding, uh, and so he can issue this preliminary emancipation proclamation, um, at that time. And he does, he takes advantage of that. But now what do we do though, with the parts of the emancipation proclamation that say, for example, you got a hundred days, right? Like, like, this, isn't like, okay, now this is the word, like, no, you got a hundred days.

[00:23:52] Is this, what do we make of that? Right? If you lay down your arms, uh, within 100 days and you can keep your enslaved people, I have an opportunity at this time to actually

emancipate or declare those people who are in, uh, uh, who are being held in bondage in states that are still under Union control, that I could set them free now with the strike, but I choose not to, that's the political expediency. But then adding in as well, the military component, right? I mean, the, the, if, if, if nobody is freed by the emancipation proclamation, the one thing that it does do is that it opens the door for raising troops among African Americans, right? And 185,000 will serve. I mean, the military expediency of passing this docu- of pa- of making this war for slavery and specifically opening up the doors to recruit African Americans in, that black folk have been clamoring for, since for, since before Fort Sumter. Like, if we're gonna go to battle, right, then you need, then let us go to battle, let us wear the Union Blue.

[00:24:50] So I think yes, there is, you know, Lincoln is having, uh, certainly having these conversations. But, you know, I think ju- and I prob- probably would argue, right? Even more important, right, are these military, are the military, uh, calculation as well as the political calculation, right? Uh, which included keeping Britain and France out of the war, out, not recognizing, uh, the Confederacy, right? Because they had already abolished slavery in their, in their territories, in their colonies and the like, and so they knew that their citizens, we would not accept them recognizing the Confederacy. So I, so I, I, I think we gotta add that to the conversation, as well as the fact, one last piece, one last piece I got, as well as the fact that, you know, Lincoln going in is like, I'm not trying to end slavery. I'm trying to preserve the Union. Right? I mean, he going into the war, right?

[00:25:40] He, he has to grow into this position. And, and, and I'm a little skeptical too, about this idea of Lincoln's vision of, of, sort of, one, one nation with all these folks. Because when he begins to think and contemplate about emancipation, he's like, I don't know if we could do this with all these black people here. If we set them free, we may have to find someplace else for them to go. And he's sending 'em adversaries down into Central America saying maybe we gotta find some place. So I'm, I'm a little skeptical about this grand vision of Lincoln early on that he grows into it, right? And I think we have to recognize that you could be, you could be Lincoln, you could be abolitionist. You could be on the right side of history, but we still gotta recognize the dominant views of the time which are rooted in white supremacy, and that he still clung to those, right? Like, yeah, I'm cool with Frederick Douglas, but I dunno about the rest of y'all as full and equal pa- partners in humanity.

[00:26:29] Jeffrey Rosen: So much to respond to there. But Pro- Professor Allen, both the question in political and military expediency and Professor Jeffries' skepticism about Lincoln's grand vision, which he says was more focused on preserving the Union than, than freeing the slaves.

[00:26:42] William B. Allen: Well, Professor Jeffries is absolutely correct that you are making decisions both in the military and the political sphere, that you can't separate them. They're the same decision ultimately. You make military decisions for political reasons and you make political decisions for military reasons. And these things are highly interactive. They cannot be separated or teased out as if there were differing moments of decision. That is, it's no accident that he had Francis Lieber work on a law of war that defended the military necessity for ending slavery, all in the name of defending the Union. The delay in extending the emancipation

proclamation was nothing other than a repetition of what he had argued since 1854, that we must stop the expansion of slavery. Which he argued for on the conviction, if you stop this expansion, you will strangle it. You will in fact end it. Now his notion of how you're going to end it over the long term i.e. without radical surgery may have seemed to some people unacceptable.

[00:27:46] I'm prepared to hear that, but I can say this. I don't believe anybody can say it was insincere that he actually did have a notion of how this would work, ultimately, to bring and end to slavery. And he worked consistently at it. When he found himself confronted with the reality of war, everything changed. Yes, he still held out all the branches of colonialization. We'll pay you for your slaves. He did everything possible to try to quell the violence and end slavery. That's the point I want to underscore. So when we say he made the war about slavery, in a certain sense it was always about slavery. Lincoln do that, even though he said it was to defend the Union. Because Lincoln understood that the defense of the Union, that defending it on a grounds upon which slavery could not continue to exist. So he didn't have to elaborate beyond saying I'm defending the Union because his belief was firm that if he succeeded in that, it would mean the end of slavery.

[00:28:48] Hasan Kwame Jeffries: Jeffrey, if I, if I could throw in, I agree, right? But here, I think there is value in, in, in, to draw in somebody who Dr. Allen knows quite well. Dr. King, you know, how long, right? Like, how long is it gonna take, right? It becomes a question of, yeah, this eventually will put a stranglehold in institution of slavery if we cut off and we don't let it to expand. But it's how long is that gonna take. A Frederick Douglas would say, "That's too long, right? We have to end it now, justice too long delayed is justice denied." I think that was part of the critique.

[00:29:19] William B. Allen: You'll certainly can see that anybody might say any length of time is too long or too short. But that becomes a question of simply calculating what it is that's possible. What is humanly possible in the circumstances? Now, circumstances are not always so kind as to allow you to calculate freely and deliberately and choose your moment. You sometimes have to respond to circumstances and let the moment choose you.

[00:29:46] Hasan Kwame Jeffries: Hmm.

[00:29:47] William B. Allen: And you must act accordingly. So I, so what I would suggest is, all we're saying is making this perfectly human. Yes. Statesmen like, but perfectly human. Trying to reason out in a prudential manner, how to reach the end in the circumstances that he faced, upholding the principles of Republican government, upholding the consent of the government and at the same time, moving in a direction that was clear to his understanding as early as 1838 already. So, so that, what we're talking about it seems to be, is not an either-or universe and too often people present it as either-or. No, it wasn't a stage that going to be free now, or they're never going to be free. The question always was, how could we get there safely? How could we free slaves and free them in a country that still is worth living in.

[00:30:43] Jeffrey Rosen: So interesting. Um, you, you're debating in part the prudential question of how, how much longer, what, what was the most effective way to achieve Lincoln's

goal? I wonder Professor Jeffries, if you're also debating the question of the degree to which sl- as you've put it, slavery was much more than our country's original sin, slavery as our country's origin. Uh, Professor Allen is arguing that for Lincoln, the constitution never explicitly recognized slavery and Lincoln was determined to allow slavery to atrophy on its own terms. But do you disagree Professor Jeffries? And is it, is it your view that slavery was our country's original sin and, and the constitution had to be radically changed in order to eradicate?

[00:31:32] Hasan Kwame Jeffries: I think certainly we think about the constitution, and we think about slavery, right? And we're talking about a century and a half of slavery before we get to the constitution, right? I mean, this was foundational to all that America would become. Uh, and we see, although we don't see the explicit language, uh, in the, in the constitution, sort of, identifying slavery, we see that this is the one subject if you will, when we think about the Atlantic slave trade, that could not be touched, that could not be discussed in Congress, right? For 20 years. I mean, we're seeing the, the, the, these protections, uh, with the fugitive slave cause, uh, for the institution of slavery. And so, yes, I see, uh, the constitution as being a document that protects the institution of slavery, uh, in several key terms and ways. Uh, and I think we got to wrestle with that, right?

[00:32:26] I mean, this is, but we shouldn't be surprised. If you are bringing enslavers to the constitutional convention to write a document. They're not going to write themselves out of it, right? I mean, so they wrote protections for what they understood to be foundational to something that existed in all 13 colonies. And even in those colonies that would abolished slavery, you're still seeing it gradual, right? So they're gradual again, right? Slavery existed in New York until 1827, Connecticut until 1849. And so I, I say, when we look at the constitution, we have to look at it, not just, uh, you know, so strictly for the language that's there, but what is the political reality of the people who are coming to the, coming together and what are their interests and what are they trying to protect and preserve? And what's the reality of what the constitution does do and how people interpret it, uh, for the next, uh, 75 or so years?

[00:33:12] Jeffrey Rosen: Thank you so much for that. Professor Allen, Professor Jeffries as he's just said, the constitution protects the institution of slavery in several key clauses and explicitly the enslaving framers wrote protections for slavery into the constitution. Do you agree or disagree?

[00:33:28] William B. Allen: Well, Professor Jeffries says we have to wrestle with that and I have wrestled with it for over 50 years and published extensively on it. And, and I read it entirely differently. Not that there were s- accommodations to slavery that we say everybody acknowledges, but that it protected slavery quite the opposite. I don't believe James Madison was mistaken when in 1789 on the floor of the House of Representatives, he argued that the 20-year limitation before being able to prohibit the importation of slaves was meant to signal the disdain for slavery, not to protect slavery. It was political reality that forced the delay, but it was moral resolve that led to the expression that we will do it. If we can't do it now, we'll do it in 20 years. Similarly, we go back to 1619, and we say it was the foundation as if it was the only foundation. Of course slaves were brought here, so that was part of the foundation. No one can deny that.

[00:34:28] Stephen Hopkins was on the Mayflower too. What people don't recognize is that Stephen Hopkins was also at Jamestown in 1609. Stephen Hopkins was not an officer. He was not an aristocrat. He was literate. He was a clerk, he was brought by the aristocratic adventurous to Jamestown because they needed someone to do some work there. While he was there, he got in trouble for popping off. He was a loud-mouth. The only thing he could conceivably have really been complaining about was a terrible treatment of the natives. And he was actually sentenced to die for his mouth. They, as it were, gave him clemency, not because they regretted their sentence, but because he was the only one there doing any work and the aristocrats couldn't get anything out of the natives and couldn't, wouldn't do any work themselves and they needed him.

[00:35:16] As it turned out, his wife in England died and he had to return to take care of his orphan children, that's how he avoided the catastrophe at Jamestown. He didn't die with the rest of them. So he ended up where? In 1619 on the Mayflower, coming with that group, he was part of that settlement. And there in Massachusetts, he got in trouble again. He was running a public house in addition to other duties. And he had this terrible problem. He would set, let anybody come in. Anybody could enjoy his board and his drink. And the, the governors there thought that was very casual and not appropriate. In other words, Steven Hopkins was part of that founding generation who invented the sense of equality at openness and inclusiveness. And that was part of the founding story also, which is getting broad brushed away in this general notion of the foundation being slavery.

[00:36:16] In the third generation another Stephen Hopkins was governor of Rhode Island, and also a signer of the Declaration of Independence. Somehow between the original Stephen Hopkins and the third generation Stephen Hopkins, the third ended up owning a couple of slaves, acquired that he was a trader. And of course, in this atmosphere, when people were doing this and questioning it was perhaps limited, he too fell into it. However, he came to the conviction that it was wrong morally, and not only was he a signer of the declaration, but he was at that point already a manumitter of his slaves. Now that's one story that begins with an ordinary soul, not some extraordinary person that says it was a richer society than that's giving note of when we talk about the foundation of the country being slavery.

[00:37:08] And those strains on the same strains that are picked up by Jean Gerome Ferris, who painted the picture of Lincoln and the contraband. Ferris paints this picture in the 1880s. He was only born in 1862 so he didn't witness any of that. But he had imbibed a sense of what transpired and his celebration of the emancipation was precisely that beautiful portrait he created of Lincoln and the contraband, conveying that there was a sediment abroad in the land that this was meaningful, this was important. And it wasn't simply that a stroke of lightning came from heaven and severed the, those in bondage from their enslavers, leaving the two ever separated, never to unite again.

[00:37:57] Jeffrey Rosen: And you reproduce Jean Leon Gerome Ferris' portrait Lincoln in the contraband in your article about the emancipation proclamation. Professor Jeffries, Professor Allen just made a lot of, uh, strong statements, including noting Madison's statements about the delay of the clause banning the importation of enslaved people as a sign of moral disdain for

slavery not support, and then telling the story of founders like Hopkins, who, although owned, were enslavers, did emancipate their slaves on moral grounds. Uh, what's your response?

[00:38:29] Hasan Kwame Jeffries: You know, when we think about the, sort of, that 1619 moment, if you will, uh, and we think about slavery in the early, uh, American colonies, uh, I think the point to be made is the colonists had choices. They had choices. Uh, they had choices to continue to, uh, expand and extend, uh, and grow the institution of slavery. Uh, they had choices about whether to racialize the institution of slavery. They had choices about whether, uh, to encode and embed this racialized version in the institution of slavery. Now they're not making these decisions in, in, in choosing a particular path in 1619, right? I mean, they're going along with what the, the transatlantic world and European nations are doing. But by the time we get to the 1640s, by the time we get to the 1670s, by the time we get to the 1700s, those choices are clear. That the trajectory and the path that these colonists, uh, have set upon, right?

[00:39:25] In, which included, not just, sort of, the egalitarian views of, sort of, openness and receptivity. That, that's there, right? Not denying that that's there. But there's an equal, uh, and strong and, and, and perhaps even stronger element that is saying, you know what? We can create this society that has room for democracy in equality for some, but not for these black folks. And our economies will turn on our enslavement of these folk. It doesn't happen overnight. I mean, that's the thing, right? There are choices that are being made, uh, by those who are in positions of power to move in a particular direction and we will continue to move in that direction throughout that enco- entire colonial period and we don't break from that direction, which is critically important in 1776 or 1787. So you're absolutely right. I mean, James Madison, right? I mean, this is, this is, you know, he's one of our great political thinkers, but he also didn't free the 100 or so enslaved people that he had, right?

[00:40:20] So we may say, you know, like, yeah, you know, he thought this was gonna bring about the slow end of it, but it doesn't end within his lifetime. And he doesn't do anything to bring it about, even among those he controlled. And so I think choices are being made as well, large scale macro political choices. But then I think we also, if we wanna look at the stories, we gotta look at the stories of the individuals and the choices that they are making, even when they're surrounded by people who are making different decisions and different choices, right? Like, they, they, like James Madison's boys, his boys are telling him, right? Like, yo, this ain't the right thing to do, right? I mean, and yet they're providing these protections and don't separate themselves. And I think that needs to be, we gotta acknowledge that it needs to be a part of the conversation, uh, because it also is speaking to, uh, how the nation would develop and the, and, and the choices that, uh, the nation's leaders would be making.

[00:41:08] William B. Allen: Let me just interrupt Jeffries if I may just to say, I completely agree. I, I think it is true. Choices are being made. And, and the thing that's important, and Professor Jeffries remark is that different choices are being made by different people. It is true there is an historical tendency and direction to choices. That's why we get to a crisis. But it is also true that there are forces internal to that dynamic that are leading in opposite directions. And if we don't give due credit to the forces leading against slavery, we will never understand what happened to slavery. That is the critical factor that needs to be paged. If it's not a question of

when, it's a question of the reality that there was that stress built in. The cancer was present, the cancer did need to be removed. James Madison did well, I must correct him on that.

[00:42:00] It's not that he did nothing. It's that the little that he did was worth nothing, i.e. becoming titular head of the colonization society. So, so that he and Jefferson in embracing this dispersion theory as their hope for solving the problem of slavery were effectless to an extreme degree. I have no problem agreeing with that. And as far as racialization is concerned, I would only say this. Slavery doesn't really become racialized in this country until Jefferson publishes the notes on the state of Virginia in query 14 and specifically racializes it. That's a long way, that's 1784. That's a long way into the process.

[00:42:39] Hasan Kwame Jeffries: Well, yeah, if I could just add on that, it might be a minor note, but I, I think, I think that, that Allen would appreciate. I agree, right, with, with Jefferson, as he's theorizing on it, I mean, that's where we're getting to theorize, but when we look at law, right, and we look at, go back to 16, you know, 1860, 71 in Virginia, and these various laws that are defining, uh, a person's status through the inheritance, uh, of, through the, through the, the status of the mother, uh, I would make an argument that legally, even though we're not having this, sort of, theoretically written law, legally we're defining, uh, an, an imperpetuity, uh, that slavery would be connected, uh, to Africanness of the blackness.

[00:43:18] William B. Allen: Just a quick note, that particular process signifies what had happened throughout human history and provisions for succession and inheritance in every society, whether it affected slave property or other property. They were all talked about in terms of whether succession will run through female line or male line. That was just traditional.

[00:43:37] Hasan Kwame Jeffries: Yes. But, but in the colonies and see, this is where I think slavery becomes so, so fundamental. Because now we're actually going against English tradition, right? Like, the, the, the colonists weren't suddenly these, these great feminists who were like, "Let's empower women and follow this matriarchal, this. this natural lenial line." Like, I mean, English, English common law said, "No, this goes the power of the descends from the father." But suddenly when you start having these enslaved women and native indigenous women, uh, who are having children by white men, right? Who can then have a claim on them, suddenly thou it's an issue. And we need to change where the status of the line comes through. I think, I think this, I think we have to connect those two.

[00:44:16] William B. Allen: Of course you do. That's what I'm saying. What I'm saying is doing the, making that connection is traditional throughout human history. Di- different options in different places. I could tell you it's different under the Salic law. That therefore in the German forest, than it was in England. And if we could find this in Rome, we could find it in Greece, everybody goes through that process and they will make the decision differently in different historical periods.

[00:44:38] Jeffrey Rosen: What's so illuminating about this, this important discussion is its subtlety and I wonder, uh, Professor, I, I hear you both saying that there were forces leading in both directions at the time of the founding, both enlightenment commitments to equality and, and

choices that were made that thwarted that goal. Professor Jeffries do you, do you think that that means that it's too simplistic to say that the constitution at its origin was either anti-slavery or pro-slavery, but in fact it was something in between?

[00:45:09] Hasan Kwame Jeffries: No, I'm willing to choose a side. I'm willing to choose a side on this [laughs]. Uh, in, in, in the s- in the sense of, uh, it doesn't necessarily have to promote the institution of slavery, right? In, in, in order to provide protections for it. I mean, we, we understand that compromises are being made. That doesn't mean that it's equally 50/50 in terms of what the, the, the, you know, what the, you have these inputs, right? And then what the output is. And I would say the output bends the, bends the, the, the, a cast, what will become the foundational legal document. There's nothing higher in the United States, but the U- U.S. Constitution, right? It's higher than God, right? It's the constitution. I think that bends us, that bends us towards protecting the institution of slavery.

[00:45:50] William B. Allen: I, I gotta say, God is higher Professor Jeffries. And, and that's why the declaration is higher also because the moral authority and not the positive provisions are what determine the inclinations of the society. Uh, one quick question about the constitution again, just to show how subtle this is as you said, Jeffrey. Uh, the three fifths clause does not fail to affirm the humanity of Africans. It re- it is affirmed specifically the humanity of free Africans when it is first adopted in 1783. We have had for a long time of false narrative about that, that leads us therefore into blind paths, thinking everything was simply squarely set in a racist trajectory when it was not. So recovering the actual details of the history is extremely helpful to widen our conception of the possibilities that were there. And to some degree that will make us even harsher critics for people who didn't follow out those possibilities fully. But on the other hand, it ought to make us more patient in trying to understand what the obstacles were to doing so.

[00:47:06] Jeffrey Rosen: Professor Jeffries, are you, uh, what, what are the implications for your view about how to teach, uh, slavery in the constitution, which is obviously a central mission of the NCC. Professor Allen says, the more subtlety in detail we study the better. Do you, do you agree or, or, or disagree?

[00:47:24] Hasan Kwame Jeffries: Oh, no, absolutely. I fully agree with that. Um, I think we have to interrogate, I think we have to put into context. I think we have to, uh, look at, uh, as closely and as we can, to what extent that we can, you know, so thinking of framers, uh, in, in, in, in particular clauses and debates, uh, whether we're talking about three fifths and representation and the light. And, and we have to take, look closely and, and nobody knows this better than Dr. Allen, sort of, you know, sort of, you know, James Madison, right? I mean, he becomes the one through whom we are reading these constitutional debates and the like, and the Federalist papers. And so no, as much as possible, I think we have to put into context. But what I would like, what I think we should do as well, and I don't think we necessarily do this enough is, you know, even with somebody like Madison, right?

[00:48:10] Or, you know, we had to say, well, what were their lives? Right? I mean, so, so certainly, you know, somebody like Madison is, you know, one of the best-read people, uh, you

know, in, in the colonies, in the new nation. But he's also in enslaver, right? So yeah, you know, he can draw upon his library, uh, and, and, you know, to craft what would become, you know, this, this, this grand experiment in American democracy and then think about, sort of, what the bill of rights would be in these, these, these core protections, um, that government should not infringe upon, but he also has to just look out of the window of his front library, right? And think about all the rights that he's denying the ones or the so people that he's holding in bondage, uh, to reaffirm, uh, what rights are necessary, uh, that should never be infringed upon for a person to be free in this society, to be a free human being.

[00:49:03] So I think part of that context, part of looking at the nuance, is who are we talking about? Uh, what were their lives? And this isn't something that, you know, with slavery, you know, a Madison, and he's a third-generation enslaver, right? This is the family business, right? We can't separate that from the political decisions, the political outlook, the arguments, and the debates that are happening, uh, in that, on, on that convention floor.

[00:49:30] Jeffrey Rosen: Professor Allen, is it important, uh, as Professor Jeffries suggests to tell this story of how individual founders did or didn't live up to their ideals? It, it's true that Madison, as you suggested too, was, uh, normally he was factless, was, was your adjective. You know, by contrast, uh, Washington did eventually free his enslaved, uh, population on his death. And we just came across at the NCC, a fascinating quotation for Patrick Henry, where he said, "Is it not amazing that I, who denounced slavery as a violation of national law, myself own slaves, I do not justify it and I do not attempt to defend it." So he acknowledged the hypocrisy. Is it important to, to, sort of, tell those individual stories to help, uh, students make up their own minds?

[00:50:11] William B. Allen: Well, I, I don't know how much it will help students, but it's important to tell the story because people need to know the truth. It is the truth that is helpful. It is not the storytelling. And, and that's what I like to reaffirm constantly to people. Don't think your story is important in and of itself. What's important is that people have the free opportunity to discover the truth for themselves. In, in Washington's case for example, uh, it's easy to say he explored his slaves throughout his whole life and then told them they were free when he could no longer make any use of them 'cause he was dying. But that would fail to understand what actually happened. He didn't just free his slaves, including slaves entailed to him, but whom he never possessed or had any contact with because it was a near legal relationship, but he provided for them.

[00:50:59] And he t- undertook to put himself in a position to do that despite spending an extraordinarily long period of time not being able to give immediate attention to his own estate. He nevertheless was able to pull things together sufficiently. That was his form of reparations you might say. But it wasn't just reparations. It wasn't say, "Here I owe you this." It was a sense of humanity. Having become convicted of the wrongness of slavery. He was further convicted that it would be immoral to take people held in bondage and say to them, on one day you are free, you can go now. When there's no particular place for them to go and there's no one waiting to receive them, there's no provision for them. So they, we, we have to look at them in the

broadest possible manner. Not merely in the sense of asking the question, did they, or did they not have slaves?

[00:51:50] Jeffrey Rosen: This is indeed as our, uh, NCC intern Colin Thibault suggests an amazing conversation. We have time for just a few of the questions which are, um, heating up the question box. Our friend and, uh, board member, Derek Roman asks to what degree was the recognition of Juneteenth as a national holiday a performative action versus a substantive act to address reconciliation and reparation? How do the professors recognize the holiday, uh, Professor Jeffries?

[00:52:20] Hasan Kwame Jeffries: Well, I think it is a, a modest, uh, move, uh, a symbolic move, a modest move, a modest endeavor, but I think it is meaningful. Uh, I, you know, it is clear, uh, nobody, uh, you know, coming out of the, the, the protest of 2020, uh, where African Americans are calling for an end to, uh, police violence calling for an end to, uh, qualified immunity for police. Uh, they don't get that, but they get a national holiday. Uh, so in that sense, you know, the Juneteenth as a national holiday, isn't lifting anybody out of poverty, right? There was no reparations check that came along with the holiday. Uh, at least I didn't get mine in the mail. Uh, but it is meaningful still, right? Because if we take this moment to say let's, for the first time as a nation, uh, let's pause and look back at the long and terrible history of slavery.

[00:53:12] Let's take a moment and look back at that moment of emancipation and what that would bring. Let's take a moment and look back at the time when America moved closer towards becoming a multiracial, uh, democracy and let's pause and look back and see what happened to it. What happened to the promise and potential of reconstruction? Uh, if, if we can take that, maybe we won't end poverty, but we certainly can begin a conversation that will help us understand the persistence of racialized poverty in America.

[00:53:45] And if we do that, if we use the, the national holiday as a moment of education, where we can come together and sit and learn, and I always can enjoy sitting and listen and learning, uh, to Dr. Allen, and these are opportunities, then that is when, uh, this holiday will become meaningful. It won't become meaningful, uh, if we're sitting around buying, uh, uh, red, black and green mattresses, which is, this is what America's gonna do eventually, right? But if we keep it focused on this opportunity to have honest conversation and talk about these truths, talk about these facts about the American past and present, then I think it is something special.

[00:54:20] Jeffrey Rosen: Well, all of our, uh, listeners who are lucky enough to hear both of you listen and learn, um, each time you convene and because our one rule here is that we end on time, I'll ask, uh, Professor Allen to, to have the last word. You know, in aversion responding to Derek Roman's question, uh, after this remarkably illuminating discussion, to what degree do you see the recognition of Juneteenth as a performative versus a substantive act and how would, uh, and how do you recognize the holiday?

[00:54:48] William B. Allen: Well, I must an all candor confess that I see it as performative with the goal of corralling black sediment. And to that degree, I consider it unfortunate. I think black people are perfectly capable without that kind of sponsorship of expressing themselves

fully and completely. And as I reflect on this question of taking time to look back on slavery and all of the disasters that followed the end of slavery, insofar as repression followed, that, I would simply observe we've never stopped looking back. And I think the time has come for us to ask the question. Isn't it time to discover something that will enable us to look forward?

[00:55:26] Jeffrey Rosen: Thank you so much Professor Jeffries and Professor Allen for providing a model, a shining model of thoughtful civil agreement and disagreement and debate, and for urging us to learn about historical complexity and recognize that we can reach different conclusions about its meaning, but we have an obligation to grow and learning through conversations like this. It is an honor to host, uh, conversations with you both and I can't wait for the next one. On behalf of the National Constitution Center thank you both and thanks to all for listening. Happy Juneteenth as well.

[00:56:04] Hasan Kwame Jeffries: Thank you.

[00:56:04] William B. Allen: Thank you.

[00:56:05] Tanaya Tauber: Today's show was produced by John Guerra, Lana Ulrich, Melody Rowell, and me, Tanaya Tauber. It was engineered by Dave Stotz. Research was provided by Colin Thibault, Sam Desai, and Lana Orrick. For a list of resources mentioned throughout this episode, visit constitutioncenter.org/debate. While you're there, check out our upcoming shows and register to join us virtually. You can join us via Zoom, watch our live YouTube stream, or watch the videos on demand in our media library @constitutioncenter.org/constitution. If you like the show, please help us out by rating and reviewing us on Apple Podcasts or by following us on Spotify. On behalf of the National Constitution Center, I'm Tanaya Tauber.