

Slavery and Liberty at America's Founding

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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, the senior director of Town Hall Programs. Last week, the National Constitution Center hosted a conversation in partnership with the Civil War Museum of Philadelphia, exploring the paradox of liberty and slavery in America from the revolutionary period through the Civil War era.

[00:00:32] Tanaya Tauber: Our guests were acclaimed historians, Harold Holzer, author of numerous books on the Civil War era, including *Lincoln: How Abraham Lincoln Ended Slavery in America*, Edward Larson, author of *American Inheritance: Liberty and Slavery in the Birth of a Nation*, and Manisha Sinha, author of *The Slave's Cause: A History of Abolition*. This program was made possible through the generous support of citizens in the stream live on February 28th, 2023. Here's Jeff to get the conversation started.

[00:01:07] Jeffrey Rosen: Hello, friends. Welcome to the National Constitution Center and to tonight's convening of America's town hall. I'm Jeffrey Rosen, the president and CEO of this wonderful institution. Before we begin, let's inspire ourselves as always for the conversation and learning ahead by reciting together the National Constitution Center's mission statement. Here we go. The National Constitution Center is the only institution in America chartered by Congress to increase awareness and understanding of the US Constitution among the American people on a nonpartisan basis.

[00:01:40] Jeffrey Rosen: Welcome, Harold Holzer, and Larson, and Manisha Sinha. Ed Larson, we'll begin with you. Your important new book has a chapter called the compromised convention 1787. It describes the three great compromises over slavery during the convention, the three-fifths clause, the importation of enslaved people clause, and the fugitive slave clause. And you say that the property view of slavery held by Americans at the time may explain the delegates' acceptance of the fugitive slave clause, which came as close to anything else in the constitution to sanctioning slavery at a federal level. Both

pro-slavery southerners and anti-slavery northerners say that they won at the convention, but you find the evidence as quite ambivalent. What can you say about what the convention teaches us about whether or not the Constitution was pro-slavery?

[00:02:33] Edward Larson: Well, Jeff, you're absolutely right. And thank you ... First, thank you for having me on. Thank you for having me back with the Constitution Center. It's a national treasure, as are you. What I do wanna say about that is you, you pose the question correctly on both sides. And let me, let me go back. The book, of course, covers 30 years. And the Constitution is one chapter, then following chapter is the ratification debates. And I like to go back to them, not what we think now looking back. And the delegates went home from Philadelphia with the southerners claiming victory and the northerners claiming victory.

[00:03:18] Edward Larson: So you said, yeah, it's sort of ambiguous, it was ambiguous enough for them. They encountered resistance, they encountered anti-federalist in both places that thought they hadn't gotten enough. But into your question, the southerners thought they had gained some key points. And it should be remembered, by the time of the Constitutional Convention, you know, Constitutional Convention, we tend to blur with the revolution, but actually, it was a half a generation later, cuz you go from 1776, you're all the way to 1787. And then ratification a year later.

[00:03:59] Edward Larson: And by this time, the northern states had moved fundamentally. Remember, before the revolution, every state had chattel slavery or every colony had chattel slavery. It was everywhere. The northern states had either already moved or moving toward the abolition of slavery, led by Massachusetts, Pennsylvania, Vermont, and New Hampshire. Confederation Congress ended slavery in the Northwest Territories, the future land of Lincoln. Harold will know. And so that was established and northerners had, at a very deep level, turned against slavery, partly religious, partly on ethical grounds, partly on political grounds, partly on this conception of liberty. They had turned it against. And the revolution had created many more free blacks.

[00:04:58] Edward Larson: Also the African Americans had turned against slavery in a new way because of the liberty tribe that came out of the Revolutionary War. In contrast, the south, by the time of the convention, was truly doubling down in slavery. So for my study of these peoples, everyone there at the convention knew that slavery was deeply entrenched in America, that it was not going to go away on its own, period. It was not weathering, it was growing. And so the southern delegates, those that wanted union, and the

northern delegates who wanted union. Great examples, Benjamin Franklin, Pennsylvania, anti-slavery, president of the first abolition society in America, fountain of liberty, the only coequal was George Washington, Virginia, a slaveholder with, over a hundred of his own enslaved people, and overseeing over 200 of his wife's. They represented this sort of clash that hit together because both deeply wanted to affect the national union. They were committed. They believed that for America to survive and prosper, they needed to form an economic and political, and military union of all the states. Others would follow.

[00:06:27] Edward Larson: The people who went to the convention believed this way, whether it'd be the Pinckneys, slaveholders from South Carolina or people, like, from New Hampshire or New York, Gouverneur Morris was a New Yorker representing Pennsylvania. These people, many of them, were profoundly opposed to slavery, the others were profoundly committed to it. And so they realized as James Madison, the so-called architect of the Constitution, he said repeatedly ... In his own notes of the convention, he said repeatedly that he told the other delegates, he said at the convention, "The things that divides these states, don't worry about big versus small, say, in the Senate, don't worry about big versus small. That doesn't divide us. We're not divided by agricultural state versus commercial. The one issue, the one issue that divides us and will tear us apart, are you a slaveholding state or are you a free state? That's the real divide."

[00:07:31] Edward Larson: Others echoed that. Gouverneur Morris, one of the big five at the convention said as well, he said, "This will only end with civil war." You get Elbridge Gerry out of Massachusetts, same sort of comments. So they knew this was an issue, and how could they bridge it over and get a national union. And as you say, one of the critical things ... Of course, there was a three-fifths compromise. Of course, there's a continuation of bringing in more enslaved people from Africa, continuation of the Atlantic slave trade into the southern states, into the Carolinas and Georgia, and they would not have joined, they argued, but for that and the northern opponents of slavery believed that, but the fugitive slave clause, the ability to reach out, because what was happening before this is because now there were free states in the north, Pennsylvania, Massachusetts.

[00:08:26] Edward Larson: Enslaved people were leaving places like Virginia, which, of course, bordered Pennsylvania back then, or leaving Maryland or leaving other states. And if they could get to those northern states like Massachusetts, they knew they'd be free. And so the, one of the things that the southerners demanded was the recognition that we can go up there, use the

federal courts and get our enslaved people back. And when they went back down south and argued this to the delegates at that state ratifying convention, such as in Virginia, or in South Carolina, or in North Carolina. We don't have very good records from Georgia, but those other three states, we see it time and again. They said, "This document, the constitution, does recognize slavery because if it didn't recognize slavery, we wouldn't have the right to go back and recapture our enslaved property." So they view that as a major victory.

[00:09:28] Jeffrey Rosen: Thank you so much for that. Manisha Sinha, I wanna, first of all, commend to our audience your groundbreaking book, *The Slave's Cause: A History of Abolition*. The New York Times said it's impossible to imagine a more, important and comprehensive treatment of the subject.

[00:09:46] Jeffrey Rosen: You identified two waves of abolitionist, movement. The first which predated the Constitution, which traced its roots back to European ideas about free soil principle and, and religious arguments against slavery dating back to the 1600s. And the second wave which begins in the 1820s, you talk about David Walker's petition which invoked the Declaration of Independence to condemn slavery. To what degree did that second wave argued that the Constitution was either pro or anti-slavery? And then to what degree did it rely on the ideals of the declaration to challenge slavery?

[00:10:23] Manisha Sinha: Thank you, Jeff. Thank you for the introduction and thank you for hosting us today. Yes, My first book was on South Carolinian slaveholders. I know what it is talking about when they were very abrogated Constitutional Convention. I was happy to write a book about people I actually liked. I started writing this book about abolition that usually people look at the 19th century, that pamphlet that you mentioned, David Walker's pamphlet, the rise of Garrisonian abolition, immediate abolition. But all these abolitionists talked about the earlier Quaker abolitionists who have preceded them, in the 18th century, and especially during the Revolution era.

[00:11:06] Manisha Sinha: And in my book, I argue that we have to think of abolition as an interracial movement that included the enslaved themselves. And, of course, as Ed shows in his book, and as I do in mine, a number of African Americans use revolutionary rhetoric to challenge the existence of slavery. So, there is, during the first wave, these Quaker founded abolition societies that begins, in 1775 actually that becomes the Pennsylvania Abolition Society. And every state has an abolition society, except, of course, South Carolina and Georgia.

[00:11:43] Manisha Sinha: So when the Constitution, comes about with its compromises over slavery, the three-fifths clause, the fugitive slave clause, and the clause that delays, the abolition of the African slave trade that everyone agreed was an awful and heinous commerce, delays that until 1808, prohibits the federal government from abolishing it until 1808. The first wave abolitionists are actually extremely disappointed. They feel that the founding of a republic devoted to the idea of universal human equality was the perfect moment for the federal government and for the Constitution itself, the fundamental law of the republic, to come out against slavery. It doesn't do that mainly because northerners needed to form a union with southern slaveholders. And this compromise come about in the Constitution.

[00:12:39] Manisha Sinha: Interestingly, of course, they don't mention the word slavery of slaves. They use euphemisms like persons held to servitude, because I think they were rather embarrassed, given revolutionary Republican rhetoric and the existence of slavery. What's interesting is of the second wave that you refer to in the 1820s and '30s when abolition starts, at that point, they're not talking too much about the Constitution. They simply want to put abolition on the country's agenda. They have seen that, you know, the northern states abolish slavery beginning with Vermont in 1777, ending with New Jersey in 1804. But in the south, instead of slavery waning, it had expanded and it was growing. And so there was a real sense that abolition had to be put in the agenda.

[00:13:26] Manisha Sinha: Around 1840, James Madison's notes on the Constitutional Convention are published. And that's when the second wave abolitionists, the people who come after Walker and Garrison, start looking at the Constitution to figure out, does it protect slavery or does it not? And there are two schools of thought on this. You know, Garrison, in the beginning, doesn't say much about it, but by the 1840s, they're seeing southerners implement the fugitive slave law, even though northern states are passing personal liberty laws and the Somerset principle doesn't die. This is the case, of course, in 1772 in Britain that did not allow colonial slaveholders to bring in their slaves to Britain and bring them back to the colonies. And it was known as the freedom principle in the north and many abolitionists and anti-slavery lawyers are using the freedom principle to actually challenge the implementation of the fugitive slave law. This is when Garrison comes up with this idea, you know, no union with slaveholders.

[00:14:31] Manisha Sinha: And by the 1850s, when the Draconian fugitive slave law of 1850 is being implemented, he calls the Constitution a covenant with death and agreement with hell, which is a biblical indictment. And I found

out in my book that he actually got this from a black abolitionist named James W. C. Pennington. Now, the political abolitionists are very keen to establish that the Constitution is, in fact, anti-slavery in spirit. And, many of them associated the founding of the Liberty Party like Salmon Chase, et cetera, have started arguing that we need to look at the first 10 amendments, the first eight especially, that guarantee certain rights to people and that this includes African Americans, it includes enslaved people.

[00:15:18] Manisha Sinha: Eventually, this becomes the anti-slavery Republican platform, where the Republicans take both sides of the abolitionists' debate. Like the Garrisonians saying that the Constitution actually protects slavery, the southern states, the federal government cannot intervene there. But like the political abolitionists, they feel that the Constitution is a document of liberty. They tend to prefer the declaration, they always refer to, like Lincoln, always refer to the Declaration of Independence. But they argue that it does give the federal government certain powers to restrict the expansion of slavery, going back to the Northwest Ordinance in 1787, that the federal government could legitimately exercise its constitutional powers to limit the spread of slavery.

[00:16:01] Manisha Sinha: So the Republican Party platform comes out of this abolitionists' debate over the nature of the Constitution, but the Garrisonians saying, you know, this is a pro-slavery Constitution that they compromise on slavery, and that was a bad thing. And that, in fact, it's a covenant with death, which, of course, the Civil War was. But the political abolitionists also have a point that the federal government could use its powers to act against slavery. And that's exactly what Lincoln does, of course, during the Civil War.

[00:16:33] Jeffrey Rosen: Absolutely fascinating. Harold Holzer, we've just heard that James Madison's notes were published in 1840, saying that the convention had refused to admit any idea that there could be property in man. For Frederick Douglass, this changed his conception of himself as a citizen and he invoked Lincoln's speech to argue that the Constitution was not pro-slavery and there was a libel on the founders to suggest it was. Lincoln also invoked Madison's notes and said that slavery was inconsistent with the declaration and that the Constitution was not pro-slavery. Tell us about Lincoln's evolving views about whether or not the Constitution was post-slavery.

[00:17:12] Harold Holzer: Well, first of all, thank you. Let me join my colleagues in thanking you, Jeff, for this opportunity and congratulated on his, on his new book, American Inheritance, which is a wonderful, wonderful addition to the literature. And as you suggested in your question, as Manisha has said in her, response, Lincoln had a complex relationship with a complex

document. If the Constitution could be referred to as both pro-slavery and pro-liberty, Lincoln was perfectly willing to embrace the Constitution or to almost disavow it at different points in his rise beginning in 1858, as Ed points out in his book when he talks about the house divided. He is ... And that the nation will eventually have to be one thing or the other. It will ... I- It may not be, ... Well, they cannot be divided forever, that's sort of embracing the loose vision of the, Constitution as, as ultimately being a freedom document, a document that encourages the advance toward freedom.

[00:18:20] Harold Holzer: And what, what I found in ... What I always find interesting, I don't think many people write about this, ... Lincoln doesn't get into as much trouble with, the, the pro-slavery, element. I mean, ultimately, he does, but by invoking a house divided, he is, after all, quoting the Bible. Whereas William Seward, who ultimately is the favorite to win the presidential nomination that Lincoln wins, talks about a higher law than the Constitution, for which he gets into enormous difficulty with people who believe he has gone over the line, cannot be elected president because he cannot win the moderate states of Illinois and Ohio in the coming presidential election, but it gets more complicated.

[00:19:11] Harold Holzer: So 163 years ago, precisely on the day we are here talking, in 1860, Lincoln comes to my city, New York, and decides to interpret not the Constitution but the signers of the Constitution by calculating in research he does at the State Library in Springfield, Illinois, calculating that 21 of the signers of the Constitution later either voted on measures like the Northwest Ordinance or even all the way up to the Missouri Compromise, I think in one instance, from agent signer, but voted to accept federal, control of slavery in federal territories. So Lincoln, suddenly interprets the Constitution as a freedom document, at least in the intent of those who wrote the Constitution.

[00:20:08] Harold Holzer: And as Manisha mentioned, Lincoln much prefers to talk about the Declaration of Independence, in later years, obviously, at Gettysburg, when he talks about four score and seven years before 1863. He's referring to the declaration not to the Constitution. But, again, to add to the complexity ... And I'm making it more complex, I fear, by doing this out of chronological order. But, in his first inaugural address, on March 4th, 1861, which I think is sort of an overlooked masterpiece in the Lincoln canon, at least ... To me, it ranks third or fourth among his magisterial writings, along with the second inaugural Gettysburg in his farewell to Springfield. But in that first inaugural, as the union is beginning to dissolve, he reminds his listeners and the broader reading audience that you don't have an oath to destroy the union while I shall have a most solemn oath to preserve, protect, and defend it. And, of

course, he's talking about the presidential oath, which is enshrined specifically in the Constitution so it behooves them.

[00:21:22] Harold Holzer: So how do we get to where Lincoln really ... You know this is a man who was described as an abrogator of the Constitution in later years, and we can get to that, in other points of the discussion. But the great wrap against and even in the north is that he is ignoring the First Amendment and he is banning newspapers and such. But here's the most anomalous part of Lincoln's relationship with the Constitution, at least to me. As he's preparing to leave Springfield, Illinois and go to Washington, he embraces the notion that he can have the highlights of both documents work for him in his quest to proclaim the union almost a divinity. And that is that the declaration is an apple of gold and the Constitution is a frame of silver, which is also biblical, also ambiguous.

[00:22:27] Harold Holzer: What is a frame? Is it something that displays something to great effect? Or is it something that constricts something? He doesn't explain, but the height of the ambiguity of that statement comes in the fact that if one looks through the incoming correspondence to Lincoln during the secession crisis before he goes to Washington, the suggestion of the metaphor, the apple of gold and the frame of silver, comes from a rather unlikely source, Alexander Hamilton Stephens the Georgia leader of secession, allegedly reluctant secessionist, but, of course, who gives a speech talking about the sanctity of slavery in the, in the new slave Republic, the Confederate States of America. It's just mind-boggling that Lincoln picks up on Alexander Hamilton Stephens and makes that the, the watchword of his unsuccessful attempt to hold the union together, under the Constitution and under the inspiration of the declaration.

[00:23:35] Jeffrey Rosen: Absolutely fascinating. Thank you for ... Yeah, thanks to all of you for framing the question so well. Ed Larson, your book, begins in 1765. You start discussing the legality of slavery in 1770. You begin with Crèvecoeur's question, what is an American, and talk about the very ambiguous answers to that from the very beginning about whether one had to be the descendant of Europeans to be an American or whether it was a more expansive concept. Tell us about the debate, that preceded the Declaration of Independence about who is an American and whether or not slavery was consistent or not with American ideals.

[00:24:17] Edward Larson: Liberty emerged as the defining concept of America, of what became the United States with the Stamp Act crisis of 1765. Sure, there were ideas of liberty before that, just it was an enlightenment idea of

the modern concept of liberty as has been pointed out by others, but it really takes hold. That's what they're fighting for. And when that happens, you can look over those early powerful pamphlets. So remember, John Adams famously said, "If you wanna know how the revolution began, look to the pamphlets, look to the newspapers," because this was a transformation in thinking from being a colonial part of England to being Americans, and wedded to this idea of what was America, America was a land of liberty, which is what Crèvecoeur says. Crèvecoeur says, "What makes ... What is this American?" It's a person who loves liberty, who has the frontier economic liberty, different sorts of liberty.

[00:25:22] Edward Larson: Now, he only includes European Americans. He says there's a variety now, there's French. He was a French, of course. There's Dutch, there's German, there's English, there's Scottish. But he expressly excludes both Native Americans and African Americans, both when we discussed. He held slaves himself and he talks about the slaves. Of course, he's writing ... It's a fictional account. He's writing fiction. And the fiction is some farmer in Pennsylvania, James, and James has enslaved people. He thinks that's fine. He thinks that they're better off that way. He fully embraces slavery and excludes them from his definition of Americans. But as liberty becomes a driving force, you can look at those documents. I think most people would agree the most important pamphlet relating to the Stamp Act crisis was James Otis' pamphlet.

[00:26:24] Edward Larson: And James Otis goes through that Stamp Act, these external taxes would take our freedom and make us slaves, he repeatedly says, "That will make us slaves." And he goes on, "And slavery is wrong, including the enslavement of Africans." He immediately sees a connection. And other ones who write ... All of them writing them are for the later counts and acts, all of them use this metaphor of slavery and how we will not be enslaved by parliament or, later on, it becomes by the king. That ... Because Americans saw slavery firsthand, which you couldn't in England because there wasn't slavery in England. But if you were in the new world, it didn't matter whether you were in Boston, whether you're in New York, or whether you were in Charleston, you saw enslaved people and you saw how they were treated as their inhuman treatment. They were treated like animals. You saw that.

[00:27:33] Edward Larson: And so using the slavery metaphor, that drove this movement to liberty to, ultimately, to independence. They would repeat the refrain of men, a new British song, Britons will never, never be slaves, that had just come out and that became very popular in the new world. So slavery was directly connected and it gave power to the calls for liberty. Now, did that include the ending of actual chattel slavery that Britons would laugh at us?

Famous Samuel Johnson said, "Well, I wish these claims for liberty weren't coming from the drivers of Negroes." And you got those comments a lot in England. Look, the the hypocrisy of these Americans. But what it impacted in America, as has been pointed out, many, both free and enslaved back, blacks heard these words. And you suddenly see an outpouring of pamphlets in Massachusetts, in New England.

[00:28:44] Edward Larson: You see suits by African Americans for ending abolishing slavery. You see suits brought to abolish slavery. And you will also see many whites picking up on that people like I've mentioned, Otis, but Samuel Adams, John Hancock, Benjamin Franklin, Gouverneur Morris, these are important names, and they picked up on this and a few in the south, Robert Pleasants. Most of them weren't Quakers. Some of them were religious, but the Congregational Church in New England, which was the established church in New England, adapts this position.

[00:29:26] Edward Larson: The Methodists and, Presbyterians begin playing with this idea and of that abolition is not compatible anymore with our religion or our new American ideas of liberty. So we see that growing up before the revolution and you even see supporters of slavery begin dabbling at the edges of accusing as part of the accusations against the king. Jefferson tried to put this in the Declaration of Independence, famously. The Carolinas and Georgia forced him out but said, "No, you're to blame. You, King George, are to blame for us having slavery in America. You force us to take 'em, you veto our laws where we wanna restrict the African slave trade." And by then, Virginia and the northern states did wanna restrict it, most of them had, during the revolution."

[00:30:27] Edward Larson: And so this idea of liberty spreading out, using slavery as the polar opposite. That's what they all said. There are two states, you're either free or you're enslaved. Those are the two states of humankind. And we wanna be free. Africans picked up that and some northerners, white northerners, extended it, thought it needed to be extended to ending African slavery. That became one of the driving forces. So by the time the revolution was over, you had many, most of the northern militia, including blacks in their militia fighting right from the beginning, fighting at Lexington and Concord, fighting at the Battle of Bunker Hill, fighting at the taking of Ticonderoga. And then on and on and on.

[00:31:17] Edward Larson: You see Rhode Island forming a whole regimen. You see Massachusetts, Connecticut, New York, Pennsylvania, including African Americans in their militia. And when they joined, they got their freedom. You see the British countering by saying any enslaved person of a

patriot, if they come behind British lines, they will be free. And England honored that commitment after the war. So you see this first, as it was described, this first abolitionist movement bubbling up from a variety of sources and really taking hold during this first part of the Revolutionary era in America.

[00:32:02] Jeffrey Rosen: Thank you so much for that. Manisha, one of the great contributions of your path-breaking book is to emphasize the central role of black abolitionists in fighting slavery, and in connecting the struggle against slavery with calls for Native American immigrant rights, the labor movement, anti-imperialist campaigns of all kind, and Larson has cited Otis' pamphlet as, as one place where white Americans first recognize the incompatibility of slavery with the ideals of the declaration. Tell us about what you found the, philosophical roots of abolitionism were in the first and second waves and what the efforts of black abolitionist teaches us about its eradication.

[00:32:47] Manisha Sinha: Yes. So it is, in fact, true, as Ed pointed out, that the first wave of abolitionism really takes off during the Revolutionary era, but its roots, right in the colonial era. I argue in my book that if we look at the origins of the abolition movement, then we need to look at enslaved people who are resisting enslavement, whether it was shipboard rebellions and the African slave trade or suing for their freedom. They start doing this in 17th century Virginia immediately. This is a tradition that goes down right after the Dred Scott case, where Tony says, you know, that black people don't have the right to sue, but, in fact, they've been suing for their freedom right from the 17th century.

[00:33:32] Manisha Sinha: In Massachusetts, in particular, I think, people of African descent find a lot of white allies, abolitionist allies, and, of course, in Pennsylvania with the Quakers. So the first society is founded in 1775 right when the revolution is taking off in Pennsylvania. It's founded by Quakers, but it is founded in order to assist, Afro-Indian woman who had been enslaved [inaudible 00:34:03] with her children. So here, you can see what I argue in terms of abolition, that it is an interracial radical social movement that involves people of African descent and their white allies. So Dinah Nevil, this particular woman, hadn't questioned her enslavement. Then this initial society, for the relief of, it was called society for the relief of Negroes unlawfully held in bondage in 1775 founded by five Quakers. It becomes the Pennsylvania Abolition Society of the Revolutionary War, but this society would not have been founded except for her freedom claims.

[00:34:46] Manisha Sinha: So this is the story of abolition that I really wanted to bring out because, the histories of abolition was so bifurcated. They didn't

realize that what really made abolition powerful was that interracialism. And, of course, revolutionary notions of liberty play a part. But, you know, right in the 17th century, early 18th century, you have Quaker abolitionists, outstanding ones like John Woolman, Benjamin Lay, Anthony Benezet, some of them who are, in fact, published by Benjamin Franklin. And you have outstanding puritans who are also questioning, complete and abject enslavement. So the questioning of slavery is, you know, that we often hear people say, "Oh, they were men of their times or people of their times," but actually, abolitionists were there right from the start. And certainly, people of African descent are challenging this.

[00:35:43] Manisha Sinha: This wave of abolition, as I call it, kind of dies out with the early 19th century. You know, the Constitution is there, there is a union with slaveholders, it's quite clear that the south, besides a wave of manumissions in the Upper South states like Virginia, Maryland, and Delaware, that the south is not going to abolish slavery, right? So you do have that house divided, a nation half slave, half free, you know, as Lincoln put it. And, in fact, a Quaker abolitionist first made that, claim that the United States was a house divided. And it's interesting how Lincoln sort of ... He's not an abolitionist, but he is genuinely anti-slavery in sentiment right from the start, and how he picks up on many of these critiques of slavery that are floating around him, and how he puts them together, by the Civil War.

[00:36:38] Manisha Sinha: But by the, the second wave, you know, the mid-19th century, what you have then people coming up who are saying, "You know, we're not going to wait for the states to pass these gradual emancipation laws," like the north did, mostly, except for Vermont, and Massachusetts, and New Hampshire." They were all modeled after Pennsylvania law of 1780, which just free children of enslaved people. So it was a very long and gradual process that worked out through decades. In fact, New Jersey had lifetime servants right up to the eve of the Civil War and, of course, it was the one state that didn't give all its electoral votes to Lincoln, as Harold will tell you.

[00:37:16] Manisha Sinha: You know, this approach towards abolition changes, in the mid-19th century. And it comes actually from African Americans. It comes from spectacular instances of slave resistance. It comes from, British abolition by 1833. Of course, Britain has abolished, slavery. There's a real emergence of a movement that is uncompromising towards slaveholders. And that is arguing for the immediate abolition of slavery. And it's an interracial movement, it comes from, you know, the rise of black militancy, like David Walker's pamphlet. You know, he's still ... David Walker is still answering Thomas Jefferson. In his 1829 pamphlet, he's like, "Jefferson, who speculated on our racial inferiority, in notes to the state of Virginia, for a great

man to do that, we will never be able to live this down, he must be answered." So they are still wrestling with these ideas that they've inherited from the Revolutionary era, but they're asking for black freedom.

[00:38:22] Manisha Sinha: And the other thing that I think is really interesting about the second wave, and it's true to a certain extent of the first way, too, is that they're not just asking for an abolition of slavery. They're asking for black citizenship. They're asking for black rights and equality. And I think that's what makes them so, radical in 19th century America because, of course, except for a handful of New England states, black men don't have the right to vote in most of the northern states. And, you know, they face a slew of discriminations. And I think that's the kind of abolitionism that then starts looking at the Constitution, either condemning it for its compromise of slavery or using, especially, the first few amendments to say, "All the protections of the Bill of Rights, you know, life, liberty, and, and property, due process of law should be extended to African Americans."

[00:39:15] Manisha Sinha: So these ideas, come up within the abolition movement that is often dismissed as an extremist fanatical movement, but they're, in fact, very mainstream. They use radical language, but their means are very circumspect. They are petitioning the government to, end slavery in the District of Columbia because they know it's a federal territory. Under the federal government, this is what they want to do. And this is what Lincoln wants to do, too, as early as the 1840s and eventually does during the Civil War.

[00:39:47] Manisha Sinha: So a lot of these abolitionists' ideas about politics, constitution, how to bring about abolition in the country, were not as extreme as we would think it to be. But it is, as you mentioned, a radical movement. You know, they are flirting with women's rights. They are flirting with utopian socialist ideas, communitarian, experiments. So they are, in fact, very cosmopolitan in the ideas about freedom, very influenced by revolutionary ideology. So, yes, I would definitely say that, you know, the 1848 revolution and many other ideas are, in fact, influencing them.

[00:40:31] Jeffrey Rosen: Harold Holzer, we just heard from Manisha Sinha that there were evolutions in the nature of the abolitionist arguments, both about timing, how immediate should abolition take place, and also about the goals, expanding from the end of slavery to citizenship and equality. Describe, if you would, the evolution of Lincoln's own thinking on these crucial questions of both timing and, and the scope of the goals of abolition. One of our questioners, Jay Daniels asks, "Where and how do you place the Dred Scott decision in the context of this discussion?" Certainly, that decision in 1857 transformed

Lincoln's thinking, but, give us a sense of the, the complicated question of the evolution of the constitutional views of Abraham Lincoln?

[00:41:12] Harold Holzer: Having never seen the District of Columbia but having visited New Orleans in his youth and seeing a slave market firsthand, also having seen enslaved people on the rivers, the Ohio River, and, on the toll roads of Southern Indiana when he grew up, he was horrified by. But always he believed circumscribed by the Constitution limitations on, the executive or Congress to do anything about it. He does evolve, of course, but, you know, you might say, Manisha, in a way that it's almost a strange evolution because by the time he proposes and signs DC emancipation, having, of course, served two years at Congress, lived in an abolitionist boarding house, which is now the old Library of Congress building, having seen, a waiter in that house, kidnapped and taken into slavery or back into enslavement, having approached buying his own freedom, and being short by a few dollars.

[00:42:33] Harold Holzer: Being in the back of the chamber and looking out a window and seeing slave pens that abutted the capital, naturally, his sense of revulsion increased. And yet, as I said, when he gets to DC emancipation, it's kind of a convoluted approach. It's about a consent of Congress, he introduces the DC Emancipation Act as well. And, it involves a ratification vote by slaveholders and Horace Greeley, who was serving in Congress briefly as an appointed replacement congressman, the anti-slavery editor of the New York Tribune, mocks Lincoln's proposal as a fool's errand. How can you ask the owners of the property to sign their own property away?

[00:43:26] Harold Holzer: Lincoln grows very slowly. After the Cooper Union Address, It's such a seasonal thing to mention. So I go back to it. Lincoln takes a train journey to New England for a series of speeches, more or less riffs on the Cooper Union Address with some divergence into labor strife in New England, kind of an interesting series of speeches. But he meets someone on one of those train rides, I think the ride to New Haven. And the passenger asks him, "Why not be more direct about how we end slavery? Yes, you talk encouragingly about limiting slavery in the territories. You're talking about placing slavery on the course of ultimate extinction," which Lincoln believes or at least asserts will be the result of restricting slavery, in the territories. "Why not be bolder, especially as you head into New England, the cradle of abolitionism?" And Lincoln points to a passenger a few rows ahead. Not to be graphic, but Lincoln loved bodily metaphors. So do you see the wen on that man's neck? Apparently, he had a swollen gland or a tumor in his neck.

[00:44:47] Harold Holzer: Lincoln said, "Imagine that is slavery. If you cut that out, suddenly, that man will bleed to death and die. But if you freeze things slowly and work around it, perhaps you can save him." It's kind of an extraordinary, argument to make, but cancer therapy was not what it is today, but you can see his argument. And he repeats that argument in ... I just found an instance of his repeating it to a delegation of German abolitionists in early 1864 before Missouri Republicans broke with him over the slavery issue and turned briefly to John Fremont as an alternative, because Lincoln would . . . he uses the, the tumor metaphor again.

[00:45:37] Harold Holzer: On the other hand, Lincoln believes in taking extraordinary, as I said briefly before, extraconstitutional measures to pursue the restoration of the union and within its anti-slavery momentum. He uses another bodily metaphor when he's accused of abrogating constitutional principles and going beyond his authority to crack down on the press, indeed to wage the war, indeed to make the argument that the Constitution allows the federal government to demand that the states stay within the constitutional framework of the Union. He says, and I kind of like this, it's less grotesque than the earlier metaphor, which, I hope the audience will agree. He said, "You will ... You could, would never ... you would always amputate a leg to save a body." This had a lot of resonance in the Civil War when amputations were rife to save people, after they endured battle wounds. "But you would never kill a body to save a leg. That's why I defy constitutional limitations."

[00:46:51] Harold Holzer: The Constitution is the body. The nation is the body. The Constitution ... these things that prevent me from cracking down on the press or on dissent. That's just one leg. And I can afford to lose it to save the corpus. So, he, of course, evolved and the man who sent the original shadow 13th Amendment to the states upon taking office in 1861, an amendment that's forgotten, but probably more alive than the ERA, actually, because it had no limitations. So there's still the 13th Amendment out there. I think it was ratified by one state. But Lincoln forwarded it to the states as ... And he wrote a cover letter, "In my role as chief magistrate, here is a 13th Amendment that would prohibit debate on slavery and perpetuate it." But he does come to the amendment process as the resolution to all of these disputes.

[00:47:56] Harold Holzer: And just on the rights issue, on April 11th, 1865, he does say, in what turns out to be his last speech, that it's time ... And this is something he'd written to a governor, the governor of Louisiana, it's time to extend voting rights to people of color, particularly the very intelligent or those who fought in the army. Of course, what sounds like means testing today and, can be criticized, was overheard or heard by John Wilkes Booth, who was in the

audience, when Lincoln uttered those words, and turns to a comrade, according to two sources, and says, "Did you hear that? That means Negro equality," and he doesn't use the word Negro, "That's the last speech he'll ever make. Now, I'll cut him through." and three days later, he indeed shoots him. And I think that, that idea of extending voting rights of living the promise at last of the amendments of the declaration is what, in fact, Lincoln died for.

[00:49:02] Jeffrey Rosen: Ed Larson, I think this is our last, round. So I'm gonna ask for your closing thoughts. There's so much to say about your final chapters, which take the story up through 1795. You discussed the ratification battles over the Constitution, where you have both James Wilson making overly, expansive arguments about how anti-slavery the Constitution was or how it empowered Congress to end slavery, and, and slavers, claiming that it was pro-slavery. You have the abolitionist, Quaker petitions to Congress, which Wendy Roberts asks us about in the chat, and George Washington going out of his way to recover his escaped enslaved people. What have you concluded based on your remarkable and important new book about whether the founders were more or less pro-slavery than people may expect?

[00:49:52] Edward Larson: Well, I think we're back to what you raised in your very first point. They were split. They all thought that slavery was like that. I'll remember your metaphor, that goiter or whatever it was on the neck. They all thought it couldn't be cut off without destroying the union. And they thought they ... If ... Even people like Ben Franklin, who were against slavery, they were willing to perpetuate it. He was the one who sent in those petitions along with Quakers, to get Congress to go to that ... And furthest they could possibly go toward eliminating slavery. They got nowhere. They were killed by James Madison and the other southerners, absolutely dead and buried.

[00:50:38] Edward Larson: But you had people like Wilson, who believed union overall, going north saying, "No, no, this will kill ... Constitution will eventually be used to end slavery." Franklin never believed that. Franklin never adapted that. Elbridge Gerry didn't. The southerners went back claiming it would continue. But, we do know, and I wanna emphasize the point, throughout this period, African Americans heard these cries, too. And we've heard the others talk. Yes, they filed suits. They filed petitions. They wrote letters. People like Felix Holbrook and Cesar Sartor. But where they really acted was during the revolution. They fled the British lines by the thousands, by the tens of thousands when the British troops came through, dozen from Washington's plantation, dozens from Jefferson's plantations, dozens from Madison's plantations. Same way with ... You can just go through the founders, they knew their founders were not gonna bring them liberty.

[00:51:46] Edward Larson: And so they fled behind British lines. And then they sailed out under Washington's eyes, under the eyes of a Benjamin Harrison, because they had gone to British lines. And so we do see the blacks in America, free and enslaved. In the north, they just joined the military and then they got their freedom. So we see this agency deeply embedded not only in freedom suits, but in action, in leading their, where they were safe. You mentioned one of Washington's later, one of his, basically the, the top closest maid to Martha Washington fleeing and going to New Hampshire, where the New Hampshire governor, a close friend of Washington would not send her back. Washington didn't wanna use a fugitive slave back because it was bad publicity for him, but he did everything he could to get her back. And Langdon, the governor, wouldn't help.

[00:52:46] Edward Larson: So you see that. You also see that backsliding that others have talked about. In the Revolutionary era, in almost every states, free blacks could vote. It was only later that that was taken away, was taken away state by state by state till only a few knew. By the time of the Civil War, time of the 1850s, only a few New England states allowed, even free blacks to vote. So there was a lot to be recovered during the Civil War. And we talk about the compromises, worked right into the Constitution. We didn't mention. The only reason we have an electoral college was because of slavery. Cuz Franklin and the northerners, they wanted direct election of president, but the electoral college allowed states with slavery, like Virginia, to get the full electoral votes without letting Africans vote. They could suppress the vote and they'd still get their electoral votes based on the hree-fifths compromise, of course.

[00:53:52] Edward Larson: And, of course, the reason ... If you read it closely, the reason they didn't wanna put the word slavery in the Constitution was because they knew if it was there, it would not pass in the north. It wouldn't have been ratified. And so it's the anti-slavery delegates, the people like Gouverneur Morris who want the word slavery right in the Constitution, let's face up to it. And it's the compromisers who say, "No, I wanna use a euphemism." And because of the amendments that were there, the only reason the Constitution almost failed in Massachusetts and didn't fail once in, or was on the verge of failing in New Hampshire was because it gave too much on the slavery issue. So this was a driving issue that leaves me feeling like the Constitution was just as the other two peoples stressed, and as Lincoln concluded, and as Frederick Douglass concluded.

[00:54:48] Edward Larson: This document was a split document. You could use it toward gaining, ending slavery, but it, itself was not an anti-slavery document, but if you didn't use it, Frederick Douglass concluded, if you didn't

use it, just as Harold said about Lincoln, you're never gonna get anywhere. But if you do use it, it can be a vehicle toward freedom.

[00:55:13] Jeffrey Rosen: Manisha Sinha, your closing thoughts. Your book goes right up to the Civil War and maybe a word about how Lincoln balanced his anti-slavery principles with his loyalty to the union and the Constitution. And, your next book, which, of course, all of us can't wait for, will be about the rise and fall of the Second American Republic, a long history of reconstruction. What are your broad thoughts on this question of whether the Constitution was pro or anti-slavery or was it split? And, and how was its promise either vindicated or, made anew during reconstruction?

[00:55:45] Manisha Sinha: You know, I like, Harold's metaphor or Lincoln's metaphor to see, slavery as a kind of a cancer of the body politic. And, you know, he clearly knew this. And right from the start, he is balancing his loyalty, his, to the union and Constitution with a genuine dislike of slavery. So when the Fugitive Slave Act of 1850s passed, he's like, "We have to follow it because it's constitutional, but let's have some protections for free blacks so that they are not kidnapped into slavery." So he's always, you know, what Don Fehrenbacher calls a prelude to greatness in the 1850s. He's constantly doing this balancing act, while abolitionists, who believe the Constitution protects slavery, they said, "Well, fine, like Garrison, let's get rid of the Constitution or let's remake it."

[00:56:33] Manisha Sinha: Others who, like Douglass, you know, he comes up, I think, with an idea of living Constitution before modern political theorists, do. He really does see each generation as trying to extend the promise of freedom in the Constitution, the political abolitionists. What's interesting for me about Lincoln is that the slaveholders' rebellion actually solves that dilemma for him. You know, he can finally align his loyalty to the union and Constitution with his anti-slavery principles. You know, as Harold mentioned, he does, support the initial 13th Amendment that would have introduced the word slavery in the Constitution and protected it in the southern states permanently in order to prevent secession. But the one thing he refuses to compromise on is the non-extension of slavery. He says, "I am" ... That is ... That was his red line. That was the platform on which he was elected. He was not going to compromise on that.

[00:57:33] Manisha Sinha: It's the reason eventually that the, you know, that, that's, you know, secession takes place, as I write in my first book, *The Counterrevolution of Slavery*, not because of John Brown's raid, not even because of the abolitionist, but because of the election of an anti-slavery president. For the first time in the republic's history, you have a president

elected on an anti-slavery platform. Now, during the Civil War, I mean, Lincoln uses abolitionists' ideas about using his war powers to implement emancipation in areas in rebellion. So that was the reasoning for the Emancipation Proclamation. But those who say, you know, who say, "Well, this was just a military necessity, there was no moral high ground," actually, these things were not opposed. They were linked for Lincoln. And I argue that Lincoln actually comes to abolitionists ground on his death when he endorses black male suffrage and says, "Union Army soldiers, the most intelligent," whom he had met delegations of free blacks from New Orleans from North Carolina, had visited Lincoln, "should have the right to vote." And when John Wilkes Booth says ... You know, he wants to tell him not for emancipation, but for endorsing this black male suffrage, then Lincoln does come to abolitionists ground, you know, on the eve of his death. We don't know what he would have done.

[00:58:58] Manisha Sinha: But I argue in my book, which is the new book, uh, which will be out next year, a long history of reconstruction, I argue that Lincoln was actually our first reconstruction president. Even though he dies in 1865, he unleashes progressive constitutionalism with his support of the ultimate 13th Amendment. And he also recognizes the obligation of the federal government to protect the rights and welfare of all its citizens, which will happen this time includes black people. Now, here's a man who had espoused colonization, which abolitionists support, the, you know, sending free blacks back to Africa, not because he was racist cuz he says a lot of things during, his life that makes it quite clear that he was, in fact, when it came to even racism, he was far ahead of a majority of his countrymen. but because he thinks white people will not accept blacks as free, as equal citizens.

[01:00:00] Manisha Sinha: So he espouses colonization. Henry Clay, the whig Kentucky and slaveholder, who is the president of the American Colonization Society use this beau ideal of a politician. So he gives up on that after emancipation. He is coming up with a vision of black citizenship and interracial democracy that abolitionists have been arguing for a long time. So when he is assassinated for, in fact, endorsing, even that limited black male suffrage, many abolitionists, including Frederick Douglass, recognize that and see this as a tragedy for the country. And, yeah, I do think, in that sense, we need to think of Lincoln, as Douglass put it, at the head of a movement. He, ultimately sees Lincoln as leading that movement. You know, he says, "Oh, he was a black man's president. He was a white man's president," but he understands that Lincoln is the one who actually realizes the abolitionist platform. So he's not an abolitionist, but lands with abolitionist ground. And for that reason, I think we need to look at the abolitionist roots of anti-political, anti-slavery of civil war reconstruction constitutionalism, to truly understand who were the sort of ordinary heroes and heroines of American democracy.

[01:01:20] Jeffrey Rosen: Lincoln is not an abolitionist you said, but he lands on abolitionist ground. Such a powerful thesis and, of course, it would be a great honor to have you, all of you back, next year when your book on reconstruction is out, to discuss the very question.

[01:01:33] Jeffrey Rosen: Harold Holzer, the last word in this superb discussion is to you. What, do you make of Manisha's, argument about Lincoln that he landed on abolitionist grounds with his death? And what is the fact that he came to embrace abolitionist ideals with his embrace of African American male suffrage say about the relationship between Lincoln and the founding and, and whether or not the Constitution was or was not pro-slavery?

[01:01:59] Harold Holzer: Well, it, it demonstrates his elasticity as a political philosopher. Remember ... And we must always remember, I suppose, as with the founders as well, Lincoln was a politician above all else. He was a politician in search of political power. He took a moderate course to amass in order to amass that power. As genuinely anti-slavery as I believe he was, he believed in moderation and sought opportunities.

[01:02:30] Harold Holzer: Now, we saw it with an executive order that was immediately questioned, that the chief justice, according to legend, wrote an opinion overturning that, it's never been discovered in Tony's papers, but who knows. Certainly, he would have voted to overturn and have the Supreme Court function during the Civil War.

[01:02:54] Harold Holzer: My concluding thought is that Lincoln needed the Constitution and he needed the declaration to justify all of the initiatives, both finding his fellow countrymen to save the union that was forged by the Constitutional Convention and the ratification, and they needed the declaration to give America, a beacon to which they, Americans had to aspire to form a more perfect union. And I think he needed the abolitionists. He needed the abolitionists to pave the way to be the vanguard. Just as the abolitionists needed Lincoln, they needed a sympathetic figure, who didn't seem to be radical, who moves slowly. But as he said once, when I pick up my big boots and step forward, I never step back.

[01:03:50] Harold Holzer: And I think one clue to his true beliefs about this, the sea change in our political thought came. I've just been writing about immigration so I'm going back to the German visits of 1864, when the latest delegation of, hostile Republicans had left, he said to his private secretary, the abolitionists are the worst people, just the worst. They attack me viciously. They're hateful to me. "Why do you keep seeing them?", said the secretary. And

he said, "Because their eyes are always Zionward, Zionward." They were right. He knew they were right. And he found a way to use the Constitution and the declaration to get closer to where we should be.

[01:04:47] Jeffrey Rosen: Their eyes are always Zionward. Well, all three of you, great historians have turned our eyes Zionward and helped us seek the truth and understanding the deeply complex and deeply important relationship between the declaration the Constitution and the reconstruction amendments. Ed Larson, Manisha Sinha, and Harold Holzer for providing us an example of historical conversation at its highest. Thank you.

[01:05:19] Tanaya Tauber: The conversation you just heard was made possible through the generous support of citizens and presented in partnership with the Civil War Museum of Philadelphia. This episode was produced by John Guerra, Bill Pollack, Lana Ulrich, and me, Tanaya Tauber. It was engineered by the National Constitution Center's AV team. Research was provided by Sam Desai, Lana Ulrich, and the wonderful interns here at the NCC, including Emily Campbell, Sophia Gardell, and Liam Kerr.

[01:05:50] Tanaya Tauber: 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 later in our media library at constitutioncenter.org/constitution. If you like the show, please help us out by reading and reviewing us on Apple Podcasts or by following us on Spotify. On behalf of the National Constitution Center, I'm Tanaya Tauber.