To Separate the Tares from the Corn: Debts and Slaves in Post-Revolutionary Virginia

Philip George Swan

College of William & Mary - Arts & Sciences

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"TO SEPARATE THE TARES FROM THE CORN":
DEBTS AND SLAVES IN POST-REVOLUTIONARY VIRGINIA

A Thesis
Presented to
The Faculty of the Department of History
The College of William and Mary in Virginia

In Partial Fulfillment
Of the Requirements for the Degree of
Master of Arts

by
Philip G. Swan
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This thesis is submitted in partial fulfillment of the requirements for the degree of

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Ronald Hoffman

Author

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Ronald Hoffman

John Selby

James Whittenburg
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For my family
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ABSTRACT

At the close of the American Revolution many American-owned slaves were taken from their masters by the British army. This action was in violation of the peace of 1783, which stipulated that no property was to be taken by the British as they evacuated posts on American soil. In the course of protesting this action, many Virginians violated the treaty themselves by refusing to open their courts to British creditors until compensation was made for the seized slaves.

This paper explores the question of whether Virginians protested the seizure of slaves as a means of permanently avoiding the payment of their debts to British creditors, or as a way of protesting encroachments on their power by Great Britain and the Federal Government. My conclusion is that arguments relating to the payment of debts and compensation for slaves actually illustrate Virginia's strained relationship with Great Britain and the Federal Government in the early years of the Republic.

Philip G. Swan
Department of History
The College of William and Mary in Virginia
"TO SEPARATE THE TARES FROM THE CORN":

DEBTS AND SLAVES IN POST-REVOLUTIONARY VIRGINIA
INTRODUCTION

During the American Revolution many slaves either willingly went with or were forcibly seized by the British army. Many slaves who willingly left their masters were promised freedom in return for services rendered to the British army. The exodus of great masses of slaves infuriated American slave owners who demanded their return. The British, in turn, felt bound to honor their offers of freedom to blacks who sought shelter and offered assistance to the British cause.

Article VII of the 1783 peace treaty stipulated that: "his Britannick Majesty shall, with all convenient speed, and without causing any destruction, or carrying away any negroes or other property of the American inhabitants, withdraw all his armies, garrisons, and fleets from the said United States from every post, place and harbour within the same." As the British proceeded to take the slaves with them in the process of evacuating their posts, George Washington was asked to press the British to honor the treaty. The British promised to return slaves taken after the adoption of the preliminary peace treaty on November 30, 1782 and to compensate the owners of slaves taken before that date, but these promises were largely left unhonored.
George Washington decided that it would be almost impossible to ever get the slaves back and believed that it was not worth risking a continuation of hostilities in an effort to resolve the issue. Others, however, decided that the issue was worth pressing and many Virginians felt that Americans should withhold the payment of debts to British creditors until the slaves were returned or some compensation made to their owners. Virginians continued to withhold the payment of debts until 1796, when the Supreme Court ruled that Virginia’s stance was a violation of the treaty of 1783 and, thus, a violation of Federal law.

In Virginia, agitation against paying debts came predominately from the state’s southernmost counties. These counties were peopled mainly by farmers who had financed their farms with loans from British creditors. Despite the heavy debts these farmers incurred, they were proud of their independence, and easily angered by anyone who attempted to encroach upon it. When British creditors pressed for payment of debts immediately after the war, many of these farmers were outraged, and used the British seizure of slaves as an excuse to justify their refusal to pay the debts.

When the new federal government supported British claims for payment, yet failed to obtain compensation for lost slaves, many in Virginia felt betrayed, and the anger that they had directed toward the British government now took the form of resistance to the rule of a strong central government
dominated by "eastern" interests.

Yet, while Virginians used the slave issue as a rallying cry to oppose the power of both Great Britain and the United States government, many Virginians used the slave issue simply as an excuse to avoid paying their debts. There is evidence that, while the Virginians effected a highly organized system for suspending the payment of debts, the steps taken for receiving compensation for lost slaves was half-hearted at best. I hope to prove that Virginians had no real intention of paying their debts because they showed no desire to take any practical steps toward obtaining compensation for lost slaves.
CHAPTER ONE

"TOO TRIFLING AN OBJECT FOR YOU TO DISPUTE"

Over the course of the American Revolution, many slave holders lost their slaves amid the general chaos of war. Some slaves left willingly, while others were forcibly seized. Both sides in this conflict used slaves as laborers, and in some cases as soldiers; both financially attacked the enemy by confiscating or freeing slaves. Many slaves who willingly left their masters were promised freedom in return for services rendered to the British army. At the close of the war, these slaves naturally expected the promises of freedom to be honored. The potential exodus of thousands of slaves infuriated American slave holders who saw the return of their slave property in keeping with the "common practice since ancient times for the peace treaty to provide for the mutual restoration of fugitive slaves...."1 The British, in turn, felt bound to honor their offers of freedom to blacks who sought shelter within British lines and offered assistance to the British cause. The intricate negotiations concerning the captured slaves continued long after the war's close. The

issue constituted one of the many stumbling blocks in Anglo-American relations in the 1780's and 1790's as Americans argued that the payment of pre-war debts should be deferred until the British government made reparations for the stolen slaves.²

There has been much disagreement over the exact number of slaves lost by masters during the American Revolution. It has been estimated that roughly 4,000 slaves left with British forces evacuating Savannah, Georgia, 6,000 with British leaving Charleston, South Carolina, and another 3,000 with those departing New York City in 1783.³ Even with another 5,000 slaves seized by the British prior to 1783, the resulting total of approximately 20,000 slaves over the course of the war falls far short of Jefferson's estimate that Virginia alone lost nearly 30,000 slaves during the invasion of that state by Cornwallis.⁴

The most detailed demographic records available are undoubtedly those kept by British commissioners in New York who were specifically assigned to record the names of every former slave, the names of their former masters, the name of the vessel on which they were to embark, and a description of


⁴Ibid.
their overall character. Of the roughly 3,000 blacks officially listed, 1,336 were men, 914 were women, and 750 were children.

It is important to note, before delving into the conflicting claims of the Americans and the British, that Americans also lost many slaves to their French allies, and even to other Americans, over the course of the war. When it came to the spoils of war, Americans held no more respect for the private property of their compatriots than did their enemies. On October 9, 1781, during the siege of Yorktown, Washington asked his officers to account for any blacks "who have come out of York," and decreed that any officer found in possession of such a person was to be "called to the strictest account." In a letter indicative of the internal dissension already growing in a nation once unified in war, Benjamin Guerarde of South Carolina appealed to John Hancock of Massachusetts on behalf of "Messrs Anthy and P Lawley & others Citizens of this State." The letter concerns an attempt by these individuals to go to Boston to "demand and bring home sundry Negro's which in 1779 were captured and carried off their Plantations within this State by British maurusaders, and shortly after, recaptured by two public armed Vessels belonging to the Commonwealth of Massachusetts." When the Massachusetts courts refused to turn over the slaves, the

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6Ibid., p.159.
Privy Council of South Carolina "advised" Guerarde to "remonstrate to your Excellency on the illegal detention of the said Negroes contrary to the Articles of Confederation, and as a gross attack on the Dignity, Independence & Sovereignty of this State...it is alarming to the last degree, as of the most fatal consequences to the States whose Lands are cultivated by Negroes, if their Negroes...are to receive emancipation in the State of Massachusetts...."\(^7\) Allowing for eighteenth-century hyperbole, one still senses the passions aroused in planters who were forced to apply for former slaves through legal channels unsympathetic to their claims.

Perhaps more frustrating to slave holders was the delicate nature of dealing diplomatically with French allies who were less than accommodating in turning over slaves they had appropriated as personal servants. This issue was centered in Virginia, where French troops were stationed after the Yorktown campaign. After Colonel Thomas Read warned Governor Benjamin Harrison of Virginia that "there is a number of negroes with the Troops" and that unless they were reclaimed, "those who have Property of that kind in the vicinity of the Camps will suffer by their going off,"\(^8\)


Harrison, on June 26, 1782, appealed to the Comte de Rochambeau, the French commander, for redress of the growing number of complaints. Certain that French possession of American slaves "must be without your knowledge," Harrison gingerly explained that there "is no other way by which the unhappy sufferers in this and the Neighbouring States can recover their property but thro your Justice... I have to request ye favour of your Excellency to give immediate orders for the securing all the Negroes without distinction that are amongst your Troops... this piece of Justice will do Honor to the French Troops and will silence every clamour that has been rais’d on this disagreeable subject."  

On the same day, Harrison appointed a sheriff from Sussex County, along with a contingent of militia from Williamsburg, to "receive the Slaves supposed to be with the French Army... & either confine them in the Goal [sic] in W[illia]msburg or bring them to Richmond as may be most expedient...."  

Rochambeau responded three days later, explaining that most of the blacks with the French army came from Rhode Island, and while he was more than willing to "help the Virginians recover slaves," he would not do so "at the sacrifice of his fellow Frenchmen...."

In


despair, Harrison wrote to Washington on July 11th, complaining that "I have written on the subject till I am wearied out." While some slaves had been returned by one Means or other they are detain'd either for want of the owners having proof at hand or the negroes declaring themselves free etc. Our People are much disturbed at this conduct and it will have a bad effect and what makes the matters worse is that the French will loose [sic] their services if ever they get so near the Enemy as to desert to them.\(^{12}\)

Yet, by far the greater proportion of the conduct disturbing to the Americans came at the hands of the British.

The British relationship to the slave population had been one of great economic and strategic importance from the outset of the war. The British threat to arm slaves raised the dreaded specter among the rebels of slave insurrections which, in turn, kept many nervous slave holders in their communities and out of the army.\(^{13}\) The British seizure of slaves also undoubtedly contributed to some of the economic chaos that beset a southern economy dependent on a stable slave labor


\(^{13}\)Savell, Wine and Bitters, p.34.
force for its prosperity.\textsuperscript{14}

The fact that, out of a slave population of roughly 500,000, only 30,000 at the most defected to the British is undoubtedly due to suspicions among many slaves about the integrity of British promises of freedom.\textsuperscript{15} The glaring fact that loyalists were as staunch in their support of chattel slavery as the rebels could hardly have gone unnoticed by the slave population. To many slaves, the risk entailed in running to the British was too great when one considered the terrible punishment that would undoubtedly come to a runaway slave and to his family if he were ever returned to his or her former master.

This fear was very real to former slaves like Boston King, in South Carolina, who wrote that peace between Great Britain and the United States, "diffused universal joy among all parties, except us, who had escaped from slavery, and taken refuge in the English army." Rumors that former slaves were to be returned to their masters "filled us with inexpressible anguish and terror, especially when we saw our old masters coming...and seizing upon their slaves in the streets of New York, or even dragging them out of their beds...."\textsuperscript{16} His experience was not uncommon; Judith Jackson, a former slave, relates how "My Master came for Me. I told

\textsuperscript{14}Ibid.
\textsuperscript{15}Ibid., p.35.
\textsuperscript{16}Frey, Water From The Rock, p.173.
him I would not go with him. One Mr. Yelback wanted to steal me Back to Virginia & was not my Master he took all my Cloaths which his Majesty Gave me...he took my money from me & stole my child from me & sent it to Virginia."  

Yet perhaps the most powerful example of the ultimate slave nightmare is the tragic case of Peggy Gwynn, who came to New York with the British army and married an artilleryman, only to find that "there is certain Mr. Crammon who wants to detain me & deprive me of my Liberty that I have had & enjoyed- by virtue of the Proclamation." Gwynn continued, "therefore your petitioner humbly begs such relief as your Excellency may think meet and your petitioner as in duty bound shall ever pray." The British response, chillingly blunt, can be found on the back of the letter: "As she is not a free woman, she must be delivered up to her owner."

One must also consider that a great number of slaves eventually evacuated with the British army came to the British under less than voluntary circumstances. The majority of slaves behind British lines were forcibly taken there by their Loyalist masters, and many more were not consulted about

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19 Frey, Water From The Rock, p.172.
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being evacuated to foreign lands.\textsuperscript{20} While some free blacks were sent to the west coast of Africa, the great majority either ended up in Canada or bounced around the Caribbean, East Florida, and even Central America with their Loyalist refugee masters.\textsuperscript{21} The grim fate of many Thomas Jefferson intimated in his estimate that of the thirty thousand slaves he believed were taken from Virginia, "about twenty-seven thousand died of the small pox and camp fever, and the rest were partly sent to the West Indies, and exchanged [with the West Indians] for rum, sugar, coffee and fruit...."\textsuperscript{22}

Yet it would be unfair to portray the British as insensitive to their obligations to the blacks under their protection. Indeed, their insistence on this obligation led to the tension filled wrangling that occupied negotiators on both sides of the Atlantic for years to come. In consideration of Sir Henry Clinton's proclamation issued on June 30, 1779, which decreed, "I do most strictly forbid any Person to sell or claim right over any Negroe the property of a Rebel who may take refuge with any part of His Majesty's Army,"\textsuperscript{23} Sir Guy Carleton, his successor, believed that any "Negroes who were with the British prior to the signing of the

\textsuperscript{20}Quarles, \textit{The Negro in the American Revolution}, p.173.

\textsuperscript{21}Ibid., p.175.


\textsuperscript{23}British Headquarters Papers, Vol. 17, 2094. Microfilm, Colonial Williamsburg Library.
provisional treaty on November 30, 1782 were free: those acquired after that date were to be given up." Carleton agreed with Lieutenant General Alexander Leslie, who was dealing with the slave issue in Charleston, South Carolina, that the British were obligated to hear the appeals of blacks who had served in the British army or had come to the British in response to Clinton's proclamation.

Lieutenant General Alexander Leslie had the unenviable responsibility of evacuating British troops, Loyalists, and slaves from the port of Charleston, South Carolina. In May of 1782, Leslie had issued orders to everyone under his command to release all slaves to a Board of Claims which would register all blacks behind British lines. Those proven to be the property of Loyalists were to be returned to their masters, the others were to continue as military laborers.

But by August of 1782, with little guidance from his superiors, Leslie found himself under increasing pressure from American slave owners to return slaves under his supervision.


25 Governor Patrick Tonyn of East Florida concurred with Carleton and Leslie as well, agreeing with the "propriety of preventing Negroes, that are rebel property from being clandestinely moved, to the West Indies, or from this province; and the attorney General has long had my instructions to that effect...."Patrick Tonyn to Alexander Leslie, November, 14, 1782, British Headquarters Papers, Vol. 54, 6172. Microfilm, Colonial Williamsburg Archives.


27Frey, Water From The Rock, p.175.
in Charleston. When negotiations with the Americans failed, Leslie's troops left Charleston with 5,327 blacks, half of whom were sent to Jamaica while the rest ended up in such varied locations as East Florida, St. Lucia, Halifax, England, and New York.\(^{28}\)

The situation as it existed in Virginia, however, differed from Charleston or New York City. Cornwallis' invading army had not in one location long enough for a large number of slaves to reach his lines. Most of the slaves with him were seized as his army made its way across Virginia. Perhaps most celebrated is the ransacking of Rosegill and surrounding plantations in June 1781. According to testimony given three months after the incident, a privateer came up the Rappahannock river on the night of June 4 and landed at Rosegill where its crew succeeded in persuading twenty blacks to join them in robbing the house. Although Urbanna mustered a force to resist the invaders, "the negroes informed their adherents"\(^{29}\) of their precarious position, allowing them to escape unharmed. "Aided by their felonious corps of negroes and mulattoes to indulge themselves in every excess of riot and plunder," the marauding band went on to other plantations where they bore off any slaves "who did not hold themselves


out as volunteers...."\(^{30}\) Despite petitions to the British for their return, the few slaves that were recovered were so ill with small pox that their owners would "suffer the vessel to depart with their negroes, relinquishing forever all hopes of regaining any property in them...."\(^{31}\)

After Cornwallis' surrender at Yorktown, the issue of captured slaves received the attention of Governor Nelson. Writing to Cornwallis on the day after the surrender, Nelson told of being "informed that a number of the Refugees from this state & also Negroes are attempting to make their Escape by getting on Board the *Bonnetta* Sloop of War...I have thought it necessary to make this communication to you, that you may take Measures to prevent the State & Individuals from sustaining an Injury of this Nature."\(^{32}\) Nelson and his successor, Benjamin Harrison, found themselves at the same time having to negotiate with their French allies over captured slaves in the aftermath of the Yorktown campaign. Nelson took Virginians themselves to task, insisting "That all the Negroes taken from the enemy be returned to their former Proprietors. The principle on which it is supposed men fight at present is to protect and secure to themselves and fellow citizens their liberties and property, and not to procure

\(^{30}\) Ibid.

\(^{31}\) Ibid.

plunder."\(^{33}\)

Not until nearly a year later did the issue of the captured slaves again become a topic of concern. On August 23, 1782, Colonel Thomas Newton, Junior, wrote to Governor Harrison that, "by a flag just ariv'd from New York, information has been given to several persons here, that if they wou'd apply for their negroes, that they woud be given up; by desire of them I beg your Ex'cy's advice on the occasion, whether they cou'd obtain flags to N. York to apply for their negroes or not, most of the owners are hearty friends to the Country & are much distressed...their desires are to get a vessel & send some man who cou'd be depended on to make a trial whether the matter can be accomplished or not."\(^{34}\) A week later, Harrison wrote to the Virginia delegates in Congress, explaining that he had refused the request "as the Intercourse would be dangerous and the Obligation if they were successful might have too powerful an influence over their future conduct."\(^{35}\) Yet, after learning from John Willoughby of Willoughby Point that "on the prospects of peace the privateers men were kidnapping them [his slaves] and sending them to the West indies,"\(^{36}\) Harrison

\(^{33}\)Robert Andrews to General Weedon, September 26, 1781, Ibid., Vol.III, p.68.

\(^{34}\)Calendar of Virginia State Papers, Vol.III, 266.


\(^{36}\)Ibid.
reconsidered. The Virginia delegates quickly responded, explaining that "The propriety of applications to the British Commander for a restitution of slaves having never been agitated in Congress, it is impossible for us to inform you with certainty in what light such a Step would be viewed by them." 37 The delegates warned that, "in general, all separate and partial transactions between individual States and the Enemy are considered as disaccording with the spirit of the confederacy, that a solicitation of favors from the Enemy at this juncture may not be very politic...." Yet, Virginia was becoming the most vocal state in the union over this issue, and on September of 1782, James Madison of Virginia "offered a resolution, immediately adopted by Congress, directing...the peace commissioners in Paris to offset claims in behalf of the loyalists with counterclaims for slaves and other property carried off or destroyed during the war." 38

The directive was hardly noted in Paris and might well have been forgotten had Henry Laurens not suggested that a clause involving the slave issue be included in Article VII of the preliminary peace treaty. 39 The provisional articles of peace signed on November 30, 1782, stipulated that:


39 Ibid.
his Britannick Majesty shall, with all convenient speed, and without causing any destruction, or carrying away any negroes or other property of the American inhabitants, withdraw all his armies, garrisons, and fleets from the said United States from every post, place and harbour within the same.\(^{40}\)

With this concession in mind, Harrison wrote to Carleton on April 18, 1783, explaining that he was sending a Mr. Hugh Walke to New York to search for slaves belonging to Virginians and that, "If there is no impropriety in this step, and your Excellency should be of the opinion that the negros are to be returned to their owners, I shall esteem it a favor if you will order some of your officers to assist Mr. Walker [sic] in his search."\(^{41}\) On April 28 Walke, John Willoughby, and "sundry inhabitants" of Norfolk and Princess Anne counties,

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\(^{40}\)Article five states that "Congress shall earnestly recommend it to the Legislatures of the respective States to provide for the Restitution of all Estates, Rights and Properties which have been confiscated belonging to real British Subjects," while Article six asserts that "there shall be no future Confiscations made nor any Prosecutions commenc'd against any Person or Persons for or by Reason of the Part, which he or they may have taken in the present War...." The honoring of Article five, in fact, was often tied by Americans to the honoring of Article seven by the British. Richard B. Morris, *The Peacemakers* (New York: Harper & Row, 1965), pp.463-464.

reported to Carleton that they "are sorry to say, that contrary to the...[Articles of Peace] they have been inform'd, Passports have been granted several negroes to embark on board Transports ...and that your petitioners cannot compell [sic] any of their slaves to return to their duty, unless by their own voluntary consent...they therefore beg leave to represent to your Excellency that they are apprehensive of a total loss...."\footnote{Ibid., Vol.92, 10098.} The British response was extremely unsatisfactory to the Virginians, that "no slaves were to be given up, who claimed the benefit of their former proclamations for liberating such slaves as threw themselves under the protection of the British government, and that...[they] thought it unnecessary for us to wait any longer on business of that nature."\footnote{Thomas Walke to Virginia Delegates, May 3, 1783, William Hutchinson and William M.E. Rachal, eds., \textit{The Papers of James Madison} (Chicago: The University of Chicago Press, 1962- ), Vol.7, 6.} This announcement touched off an impassioned letter from Walke to the Virginia delegates in Congress warning that "if there is not an immediate check put to the proceedings of the British General in this matter, the injury will be inconcieveable [sic], as I am well assured several hundreds of the above mentioned slaves sailed during the last week to Nova Scotia...."\footnote{Ibid.} By May of 1783, the Virginia House of Delegates was
deeply involved in the controversy over captured slaves and passions had begun to grow warm.\[^{45}\] On May 8th, a motion was proposed which suggested "that the Prisoners of War should be detained, until an answer be given as to the delivery of slaves...."\[^{46}\] Although a bill was introduced on May 16 to halt the further sale of confiscated Loyalist property, "it thereafter was laid aside possibly because the British military officers in the United States showed no inclination to enforce the terms of the preliminary peace treaty by returning slaves and other property."\[^{47}\]

Into this maelstrom, Congress sent Washington to discuss the slave issue along with other volatile questions with Carleton. On April 15, 1783, Alexander Hamilton introduced a resolution in Congress instructing Washington to "make the proper arrangements with the Commander in Chief of the British forces, for...obtaining the delivery of all negroes and other property of the inhabitants of the United States in the possession of the British forces, or any subjects of, or adherents to His said Britannic Majesty...."\[^{48}\] Washington wrote to Carleton on April 21, suggesting a personal


\[^{47}\] Ibid., Vol.7, 172 n.7.

conference to discuss among other subjects "the carrying away by the British of American property including Negroes." Carleton seems to have been reluctant to attend a meeting where, like Leslie in Charleston, "he professed to be uninformed by the British ministry about how he should interpret...subjects requiring his participation," saying, "after all I only give my own opinion." The meeting on May 6 was filled with tension centering to a large extent on the issue of captured slaves. Carleton explained to Washington that he had anticipated the coming of peace and had already begun preparations to evacuate not only British troops, but "those Persons who supposed that from the part they had taken in the present War it would be most eligible for them to leave this Country, and that upwards of 6,000 Persons of this Character had embarked and sailed and that in this Embarkation a Number of Negroes were comprised." When Washington expressed shock that Carleton would violate the treaty in this way, Carleton retorted that he,

> Wished to be considered as giving no construction to the Treaty that by Property in the Treaty might only be intended Property at the time the Negroes


50 *Papers of James Madison*, Vol.7, 106 n.3.

were sent off, that...Negroes and other Property were only not to be destroyed or carried away but he principally insisted that he conceived it could not have been the intention of the British Government by the Treaty of Peace to reduce themselves to the necessity of violating their faith to the Negroes who came into the British Lines under the Proclamation of his Predecessor in Command, that he forbore to express his Sentiments on the Propriety of these Proclamations...that if the sending off the Negroes should hereafter be declared an Infraction of the Treaty, compensation must be made by the Crown of Great Britain to the Owners, that he had taken measures to provide for this by directing a Register to be kept of all the Negroes who were sent off....

Washington's response to this rather disingenuous reply was to repeat that Carleton's position was not in keeping with "the Letter and Spirit of the Articles of Peace." Washington especially took issue with Carleton's offers of compensation, "as it was impossible to ascertain the Value of the slaves from any Fact or Circumstance which may appear in the

52 Ibid.

53 James Madison wrote to Edmund Randolph that Carleton's stance was "an ominous sample of candor & good faith in our New friends." May 13, 1783, Papers of Madison, Vol.7, 42.
Register." The value of a slave depended as much on his "Industry and Sobriety" as his age or occupation. Washington also expressed doubt that slaves would give their real names and those of their masters, making the register all but useless to the Americans. Carleton, no doubt relishing the opportunity to undercut Washington's logic, pointed out that "as the Negroe was free and secured against his Master he could have no Inducement to conceal either his own True Name or that of his Master."\(^{55}\)

After the meeting, Washington wrote Carleton, explaining that any further discussion of the legal subtleties of this issue should be left "to our respective Sovereigns." He continued, "I find it my Duty to signify my Readiness, in Conjunction with your Excellency, to enter into any Agreements, or take any Measures which may be deemed expedient to prevent the future carrying away any Negroes or other property of the American Inhabitants."\(^{56}\) Carleton agreed to allow Washington to appoint commissioners to inspect all future embarkations from New York City. Washington named Egbert Benson, attorney-general of New York, army contractor Daniel Parker, and Lieutenant Colonel William S. Smith,\(^{57}\) to assure that "mistakes or misconstruction might thereby be

\(^{54}\)Ibid.

\(^{55}\)Ibid.

\(^{56}\)May 6, 1783, Writings of Washington, Vol.26, 408-409.

\(^{57}\)Quarles, The Negro in the American Revolution, p.169.
While Washington dealt with the slave issue on the domestic front, Congress, in May of 1783, urged the commissioners in Paris to inform the British that carrying away slaves was now a violation of the preliminary articles of peace. The American commissioners were told in reply that to return blacks "whom we had invited, seduced if you will, under a promise of liberty, to the tyranny and possibly Vengeance of their former Masters, would have been an act as scarce any orders from his Employers...could have induced a Man of honour to execute." Yet, the British admitted, "ulterior points" could be discussed after the formal ratification of the treaty brought discussions out from under the gaze of the watchful French. In any event, the British interpretation of the final treaty rendered a quick resolution to the controversy all but hopeless.

The fact that the British continued to evacuate slaves after the signing of the preliminary peace treaty was in American eyes a blatant violation of Article VII since the article specifically stated that the British were not to take slaves in the course of evacuating their posts. Yet, Sylvia Frey argues, the British viewed Article VII as resting "on the

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59 Ritcheson, Aftermath of Revolution, p.73.

60 Ibid.
juristic conception of the rights of conquest, which gave the army title to slaves, fugitive or captured, 'as to any other acquisition or article of prize.'”

Charles Ritchieson makes the point that slaves from Yorktown, Savannah and Charleston were taken long before Article VII went into effect, thus freeing the British of any responsibility for their return.

To these arguments must be added the fact that the American government never managed to compile official data on the number of slaves seized, their value, or the owners to whom restitution could be made.

The spirit of cooperation was as short lived in New York as in Charleston. On May 19, a week after Carleton approved the American commission’s appointment to inspect embarkations, James Belsches Jr. of Virginia wrote to Congress that on his journey to New York, fellow Americans told him that several blacks had been "carried away in the fleet to Nova Scotia and many entering daily on Board private Vessels for different parts of the World as they have leave to do." Seeking permission to take possession of some slaves he recognized, Belsches was directed to Major Bibby, the Commandant’s

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63 Ibid., p.72.
secretary. Belsches told Bibby that:

I had come from Virga with a view of recovering some Negroes agreeable to the Treaty of Peace. He asked me if I had found any of them, I told him yes, he asked if they were willing to go with me back. I told him No. Well Sir, says he, If you'll desire them or any of them to come to this Officer and express a desire of returning with you, you shall have permission to carry them away and not without for such were the Orders of the Commdr: in Chief.65

Letters such as this66 prompted a motion in Congress on May 23, "by Mr. Mercer seconded by Mr. Izard...that Sr. Guy Carleton had not given satisfactory reasons for continuing at

65Ibid.

66 The letters written to Carleton by private citizens all, by and large, resemble the Belsches letter, although the Belsches letter is by far the most colorful. For other such letters see: (1) Hugh Walker to Governor Benjamin Harrison, which relates that Walker was "not allowed to take any slaves without their consent" [sic] and includes a reference to one of the Governor's own slaves waiting on a British officer on Long Island, Calendar of Virginia State Papers, Vol. III, 491; (2) Rawlins Lowndes of Georgia to Sir Guy Carleton giving an account of losing "a very valuable House Servant Woman" to the notorious Colonel Moncrieff, August 8, 1782, British Headquarters Papers, Vol. 46, 5243; (3) John Harbeck to Sir Guy Carleton April 14, 1783, British Headquarters Papers, Vol. 66, 7419; (4) A letter from Sarah Haviland to the American Commissioners asks them to look into her slaves residing on Staten Island, June 23, 1783, British Headquarters Papers, Vol. 72, 8123. Microfilm, Colonial Williamsburg Archives.
N. York. Second, that he has broken the articles of the provisional Treaty relative to the negroes, by sending them off."67 A second resolution, stated "That it is not expedient at present to disband or furlough the army of the United States."68 The second resolution was withdrawn, however, after Alexander Hamilton and others argued that it would "be impolitic to make 'discharging and furloughing' depend on the continuing occupation of New York City by the British and their refusal to surrender the slaves to their alleged owners...."69 Clearly, men like Hamilton did not feel that it was necessary for Congress, "suffering from a shortage of revenue and credit,"70 to make "an express declaration that the British had violated the [treaty] "on behalf of the "alleged" owners of some captured slaves, when "a renewal of hostilities might be a consequence of such declaration." While Congress might make the slave issue "the subject of a pointed remonstrance from our Ministers in Europe to the British Court; with a demand of reparation."71 there were clearly limits as to how far Congress was willing to push the issue.


68JCC, Vol.XXIV, 361.

69Papers of James Madison, Vol.7, 68 n.4.

70Frey, Water From the Rock, p.193.

In the meantime, frustration was growing with the ineffectual proceedings of the commissioners in New York. Although they arrived on May 10, they were unable to see Carleton until the 15th. Carleton’s waffling on the issue, in the absence of instructions from his superiors, drove Edmund Pendleton to explode that "if he is not authorized to Act in the Execution of the Treaty, to what purpose did he meet Genl Washington? was it to deliver his private opinions how the treaty might be evaded, for amusement, whilst the negroes were carrying away out of his & the owners power?" By keeping a register of departing blacks, Carleton had hoped "to prevent all fraud," while leaving open "whatever might admit of different constructions for future explanation or compensation...." He had issued strong warnings to "All


73 Lord North wrote to Carleton on August 8, 1783: "The removal of the Negroes whom you found in the possession of their freedom upon your arrival at New York, and who are desirous of leaving that place, is certainly an act of justice due to them from us, nor do I see that the removal of those Negroes who had been made free before the execution of the preliminaries of peace can be deemed any infraction of the treaty. It was, however, a very proper precaution to have a correct list of the said Negroes taken and their respective values ascertained." *Documents of the American Revolution*, p.202.


75 Carleton "assigned a board of three men to keep the register, and every Wednesday morning the board met for two hours at Fraunces Tavern with the three American Commissioners." Quaures, *The Negro in the American Revolution*, p.171.

masters of vessels and others not to harbour, conceal, or carry off any negroes, the property of inhabitants, without obtaining a legal right to them, as they will answer the contrary at their peril."77 Carleton, in fact, took the offensive in accusing the Americans themselves of violating articles five and six of the Articles of Peace.78 He charged that "Claims are sometimes made to slaves, that fall not within the province of the Commissioners appointed to prevent Embarkation...." Because "It is not possible for His Excellency to interfere personally in such Investigations..." he asked the commissioners to take "short minutes of your decisions" and report to him "the cases in which you may see causes for hesitation or doubt."79 Clearly, the British found the American's incessant accusations of bad faith irritating. One cannot help but think of Leslie's comments on the "insolent" approach of these former British subjects in their demands.

Because "The sending off the negroes continues to take place under the eyes & remonstrances of the Inspector of

77The Pennsylvania Packet (Philadelphia), April 26, 1783. Microfilm, Institute of Early American History and Culture Archives.


79August 1, 1783, British Headquarters Papers, Vol. 77, 8609. Microfilm, Colonial Williamsburg Archives.
the commissioners, on June 9, specifically chose a case that would determine the extent of their power. The case involved a former slave named Thomas Francis who was on board a ship about to set sail for Jamaica. To a specific request for the return of the slave, Carleton gave no reply.

A month later, one disheartened commissioner told Washington "that although seven Negroes had been salvaged from the recently sailed fleet, he considered further remonstrance useless since about one thousand ex-slaves were scheduled to embark within a day or two." Washington concurred and wrote Congress that "from their several Reports, Memorials, and Remonstrances, Congress will be informed of the almost total inefficacy of the Measures which have been adopted for carrying the 7th Article of the Provisional Treaty into effect." He added a comment that suggests his intense desire to extricate himself from what he viewed as a matter more suitable for diplomats than generals: "Indeed I should have thought myself authorized to decide upon this point, had I not apprehended it might eventually involve consequences of considerable national concern; it was on this account I deemed

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80James Madison to Edmund Randolph, July 8, 1783, Papers of Madison, Vol.7, 217.
82Ibid., p.170.
83Ibid., p.170.
84June 23, 1783, Writings of Washington, Vol.XXVII, 27.
it more expedient to lay the state of this business before Congress, and to ask to their farther Orders on the subject.\textsuperscript{85} Congress, "sharing Washington's sentiment that the commission was little more than a farce...", authorized its abolition on July 16, "unless some changes of circumstances shall have occurred from which he [Washington] may conclude that further continuance in New York may be productive of some advantage of the citizens of the United States."\textsuperscript{86}

It is important to look at Washington's stance more closely since his views on the topic seem oddly ambivalent for a Virginia slave owner. When Theodorick Bland first brought to his attention the matter of British violations of Article 7, Washington admitted that this Article "had escaped my Notice" and said he would look into the matter of Bland's missing slaves: "Altho I have several Servants in like predicament with yours, I have not yet made any attempt for their recovery."\textsuperscript{87} While the delay can be understood as a result of a full schedule of more pressing matters, it is important to note Washington's reaction when he was first told of the circumstances by which these "servants" had been taken. When he learned in the spring of 1781 that the British sloop \textit{Savage}...
had sailed up the Potomac and seized twelve of his slaves, and that cousin and estate manager Lund Washington had tried to treat with the enemy in order to recover the slaves and prevent the burning of Mount Vernon, Washington exploded. He wrote to Lund that "It would have been a less painful circumstance to have heard that, in consequence of your non-compliance with their request, they had burnt my house and laid the plantation in ruins."\(^8\) Writing to Benjamin Harrison on April 30, 1783, Washington admitted that, in regards his former slaves whom the British had taken, "I scarce ever bestowed a thought on them."\(^8\) On the very day of his meeting with Carleton, Washington wrote Harrison that he was convinced "the slaves which have absconded from their Masters will never be restored to them" and commented on "the little good which I think is to be expected from the aforesaid article [7] respecting the Negros."\(^9\) Considering the fact that Washington provided for the emancipation of his slaves upon his and Martha’s deaths,\(^9\) one has to wonder if Washington’s ambivalent stance on the issue of slave seizures stemmed largely from his not having the stomach to fight his fellow southerners on such a volatile subject, while being unable to support them in good conscience given his dim view of the

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\(^8\)Savell, *Wine and Bitters*, p.34.

\(^9\)Ibid.


\(^9\)Savell, *Wine and Bitters*, p.34.
institution of slavery. Finally, Washington might have been concerned about agitation over captured slaves because of the potential for diplomatic discord between the United States and Great Britain, endangering the fragile peace that had been so recently established. Washington undoubtedly hoped that the issue would be forgotten for the good of Anglo-American relations, the relations between pro-slavery and anti-slavery factions, and, possibly, for the sake of the freed slaves themselves.
If Washington hoped that the slave issue would be forgotten, it was a hope sadly unfounded. Americans, and especially Virginians, used the issue of British compensation for slaves to air concerns over the nature of national honor, the relationship of Great Britain and the United States, and the ulterior motives of those who were for and against the Treaty of 1783. In Virginia, the only state to continually demand compensation for captured slaves until well into the 1790's, the issue became tied to the question of paying debts to British creditors. Whether there was an identifiable lobby demanding that the British honor Article VII of the peace treaty, whether this lobby had the ear of the populace, and whether there was a relationship between this lobby and the debt controversy are all questions that must be considered to gain an understanding of the internal dissension the slave issue caused in the new republic.

At the close of the American Revolution, the state of Virginia was economically shattered.\(^2\) The damages of war had

only added to the woes of an economy that was in a precarious state long before the first shots of the war. By the time of the American Revolution, Virginia's debt "represented approximately half of the total American private indebtedness." Most of these debts were incurred when Virginians took advantage of the financial credit extended by British creditors. A planter's account was settled annually, and when the debts became too large to be paid in one year, the creditor usually secured a bond payable on a specific date. When hostilities broke out between Britain and the United States, Virginians dealt with these debts in a variety of ways. They closed the civil courts in June 1774 to put pressure on the British government to adopt a conciliatory policy, and they kept most courts closed throughout the war. Under the Sequestration Act of 1778, Virginia debtors could discharge their debts by making payment, in Virginia currency, to the state loan office. In 1782, the Virginia legislature passed an act barring the British from collecting debts incurred after May 1, 1777. The stipulation in the fourth


96 Ibid., p.13.
article of the Treaty of Peace with Great Britain that "It is agreed that Creditors on either Side shall meet with no lawful Impediments to the Recovery of the full Value in Sterling Money of all bona fide Debts heretofore contracted," created a widespread alarm among Virginians.

In 1971, Emory G. Evans published an article entitled "Private Indebtedness and the Revolution in Virginia, 1776 to 1796." Evans argues that the Sequestration Act was "an attempt to bolster the state's currency and stabilize its finances at the expense of the enemy." While this method of paying prewar debts may have been considered valid while the war continued, Evans argues that many Virginians, undoubtedly concerned with the effects of such actions on future extensions of credit from Great Britain, realized that the debts "would ultimately have to be met." After repeated attempts to open the courts failed, Evans cites evidence of economic motives behind the public's continued refutation of the debt. Evans argues that economic motives behind the repudiation of debts owed to Britain were held primarily by


98 It is important to note that, under the Articles of Confederation, Congress had no right to sign such a firm commitment. Congress could only request the states to honor it.


100 Ibid., p.357.
Patrick Henry and his followers.\(^{101}\)

Patrick Henry and his followers were to play a crucial role in the debate over the slave issue. Henry's voting bloc came predominately from the southside region of Virginia which stood in marked opposition to the Northern Neck region.\(^{102}\) The Northern Neck of Virginia was "controlled by a relatively few families who had a large number of tenants,"\(^{103}\) while the Southside was predominately "medium sized farms...the land and other property were more equally divided...[and] the economic power of the great planters was much reduced."\(^{104}\) The creditors of Virginia were concentrated in the Northern Neck,\(^{105}\) while the medium sized farms of the Southside were financed by loans from large planters and Scottish merchants which created "a heritage of debt" in these newly settled regions.\(^{106}\) Thus, the farmers of the Southside had "an anti-British, anti-Loyalist, and, above all, an anti-creditor point

\(^{101}\)Ibid., p.374.

\(^{102}\)The sectional opposition between the Northern Neck and the Southside was first illustrated by Jackson Turner Main in his article "Sections and Politics in Virginia, 1781-1787." The William and Mary Quarterly, 3rd ser., Vol.XII, No.1 (January, 1955)

\(^{103}\)Ibid., p.97.

\(^{104}\)Ibid., p.98.

\(^{105}\)Ibid.

\(^{106}\)Ibid., p.101.
of view.\textsuperscript{107}

The Southside counties Patrick Henry and his followers represented were also fortunate in having largely escaped British depredations during the war. Most of the damage British forces did in Virginia occurred in the region between the lower James and York rivers,\textsuperscript{108} where Benedict Arnold and General Cornwallis "pursued a policy of systematic devastation."\textsuperscript{109} In the course of the invasion, "10,000 hogsheads of tobacco were destroyed, stores were seized, houses burned, and thousands of livestock and slaves carried away."\textsuperscript{110} While it seems odd that the unscathed southern counties were the most vocal in calling for a suspension of


\textsuperscript{108}Joseph Jones to James Madison, Jan. 17, 1781; "We hear they have done great injury to the houses of Col. Harrison of Berkeley, and carried away all his valuable negroes. If they attempt to visit Fredericksburg, I believe they will have reason to repent the enterprise, as there now is there in the neighbourhood a considerable force, and a further reinforcement expected to-day...." Worthington C. Ford, ed., \textit{Letters of Joseph Jones of Virginia.} (Washington: Department of State, 1889.), p.67. The Theodorick Bland household of Farmingdell in Prince George County, Virginia "was plundered by British soldiers in 1781, during the invasion of Phillips & Arnold." Martha Bland Corran, "Excerpts from Mrs. B's Diary, 1763-96." Huntington Library, CA. Microfilm, Colonial Williamsburg Archives.


\textsuperscript{110}Ibid.
British debts until Britain made compensation for depredations committed during the war, the situation becomes more understandable when one considers that these counties may have owed the greatest amount of debts to British creditors. ¹¹¹

While much property, including slaves, was taken from Virginia over the course of the Southern campaign, South Carolina and Georgia lost far more. ¹¹² The loss of slaves was so great in Georgia and South Carolina that "by 1783 the supply was extremely scarce in proportion to demand, and ordinary Negroes sold for 70 to 100 guineas, and were hard to procure at any price." ¹¹³ Yet, of all these states, only Virginia continually refused to comply with the Peace of 1783 until the British made compensation for slaves. Something other than lost slaves made Virginia different from other states over the course of the war, and much of the difference undoubtedly derived from the fact that Virginians owed more than two million pounds to British creditors, half of the total American private indebtedness. ¹¹⁴

Virginians began protesting the payment of debts to their

¹¹¹ "The Southside opposed enforcement of the treaty by a margin of five and one half to one. The farmers of these counties had borrowed sizable sums from Scottish merchants—indeed, they may have owed even more than did the large planters." Main, "Sections and Politics in Virginia, 1781-1787," WMQ, 3rd ser., XII (1955), 103.

¹¹² Ibid.

¹¹³ Gray, History of Agriculture, p. 596.

former enemy in the final year of the war. As early as February 1, 1783, William Anderson wrote Samuel Gist that "The deprivations [sic] & plunder committed by the British Army were indeed horrid-And the consequence is a determination here to make no retribution for British property, and to proscribe British subjects from recovering their debts."

On March 31, 1783, Edmund Pendleton wrote James Madison that "the Payment of British debts does not set well on the stomachs of people in general here." On May 9, 1783, Benjamin Harrison informed the Virginia delegates to the Continental Congress that "the Article of British Debts in the Treaty will be but illly digested." On May 15 of the same year, Edmund Randolph wrote Madison that "Some ill-digested minds are daily belching out crude invectives, and determinations to oppose the collection of British debts. These however are checked by the moderation of better heads."

In the closing days of the war, many Virginians defended the debtor's interests, including those who would later fight collection of the debts. As Joseph Jones wrote to James Madison on May 31, 1783, "Time for payment [of British debts] and deduction of the interest during the war, seem to be

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116 Papers of James Madison, Vol.VI, 422.


generally the sentiment, and to be desired by many of these who are supposed to be most attached to the British interest."\textsuperscript{119} Edmund Randolph wrote to James Madison on March 29, 1783, that, "if british debts should be soon recoverable, that suspension ought not to be taken off, until many years after the firm establishment of our government.\textsuperscript{120} Madison replied ten days later that "your apprehensions from the article in favor of British Creditors correspond with those entertained by all whose remarks I have heard upon it. My hope is that in the definitive treaty the danger may be removed by a suspension of their demands for a reasonable time after peace."\textsuperscript{121}

The hint of annoyance in these letters over British eagerness for compensation from debtors is not coincidental. In his letter of March 29, Randolph declared that if the debts are to be immediately recoverable, "may they not endanger us, by the possibility of a relapse into the arms of G.B. if not by a restoration of dependence, at least by a destructive connection."\textsuperscript{122} Randolph continued, "Let a merciless british creditor grant indulgence of favoring G.B. in some particular

\textsuperscript{119}Letters of Joseph Jones, p.111.


\textsuperscript{121}Ibid.

\textsuperscript{122}Ibid.
form. What is to be the consequence?"\textsuperscript{123} "A Sentinel" from Caroline County published a diatribe in the "Virginia Gazette, or the American Advertiser" to warn his "Countrymen and Fellow-Citizens" that "the exertions of the people for the public good, will be curbed by the ascendency [sic] of the British creditors over their minds; and they must either by violence remove the galling yoke, or remain in meanness and contempt."\textsuperscript{124} "Sentinel" goes on to attack "the arrogance of British creditors forbidding the measures of resistance, and reminding the people of their subjection to Ledgers...."\textsuperscript{125}

The same newspaper carried an editorial earlier in the year mourning the plight of
citizens; who, having risqued all their property they possessed, by a virtuous adherence to the cause of America, and now labouring with difficulty and distress for subsistence out of the little remains...become victims of the resentment of those they have opposed; we therefore express our disapprobation of that Article of the Treaty which provides

\textsuperscript{123}Ibid.

\textsuperscript{124}The Virginia Gazette, or the American Advertiser (Richmond), November 8, 1783. Microfilm, Colonial Williamsburg Archives. Hereafter cited as VGAA.

\textsuperscript{125}Ibid.
for the payment of debts contracted before the revolution, as unprecedented and ruinous to the suffering citizens of this State, who...can never consent...[to] lay at the mercy of British creditors on account of such debts; neither do we think there should be any authority in the laws to compel the payment of such debts to British subjects, after our citizens have sustained such hardships and injuries within our own country by a mode of warfare unwarrantable....126

Writing to Patrick Henry on May 16, 1783, George Mason stated that "I could have wished indeed that some reasonable time had been allowed for the payment of British debts."127 Yet, Mason continued, "In conversation upon this subject [of debt] we sometimes hear a very absurd question: 'If we are now to pay the debts due the British merchants, what have we been fighting for all this while?'"128 "Surely," Mason pointedly tells the future leading spokesman for debtor

126 VGAA June 7, 1783. Microfilm, Colonial Williamsburg Library.
128 Ibid.
interests, "not to avoid our just debts, or cheat our creditors...every honest man has denied so injurious a charge with indignation."\textsuperscript{129} Nevertheless, "It was the general opinion 'out of doors' that an infraction of the treaty by Great Britain relieved the Virginia debtor from obligations to pay..."\textsuperscript{130}

One of gravest of these infractions, in the minds of Virginians, was the seizure of slaves and the failure to make compensation in accordance with the seventh article of the treaty of peace. Joseph Jones wrote James Madison on May 25, 1783 that "Sir Guy Carleton's conduct respecting the negro property...will be made use of to justify a delay in paying the British debts."\textsuperscript{131} Indeed, Carleton's seizure of the slaves "confirms in their opinions, if it does not increase the number opposed to the payment of British debts."\textsuperscript{132}

While many may have genuinely wished only to delay the payment of debts until Great Britain made compensation for captured slaves, there is evidence that the motives of some who protested the seizure of slaves derived more from a desire to permanently escape their debts than to gain compensation for lost slaves. Edmund Pendleton, writing to James Madison

\textsuperscript{129}Ibid.


\textsuperscript{131}Letters of Joseph Jones, p.108.

\textsuperscript{132}Ibid., p.111.
on May 26, 1783, told of how "some Gentn have received wth. great pleasure the Account of Sr. Guy Carleton's tergivisatious [?] conduct respecting the restitution of Our slaves, considering it as a proper excuse for not paying British debts...."\textsuperscript{133} Pendleton added, "This however is at present only common tab[le] talk...."\textsuperscript{134} Three weeks later, Pendleton wrote Madison that "The motive was obvious for the Gentlemen saying they rejoiced at the slaves having been sent away from New York, as an infraction of the treaty which would justify the non-payment of British debts; however this was only private conversation."\textsuperscript{135} Ralph Wormeley Jr. wrote British Secretary of State Charles James Fox that "there are many honorable Gentlemen in this Country, who may owe money and scorn to avail themselves of any subterfuge, yet there may be others who wou'd embrace a less specious one than is afforded to them to excise themselves from such an irksome and onerous imposites."\textsuperscript{136}

Many Virginians agreed with George Mason when he told Patrick Henry "upon the whole, we have certainly obtained better terms of peace than America had cause to expect; all

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\textsuperscript{133}\textit{Papers of Madison}, Vol. VII, 83.
\textsuperscript{134}\textit{Ibid}.
\textsuperscript{136}August 8, 1783, The Ralph Wormeley Letterbook, University of Virginia Library. Microfilm, Colonial Williamsburg Archives.
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the great points are ceded to us; and I cannot but think it would be highly dangerous and imprudent to risque a Breach of it...."137 On May 7, 1783, Mason wrote Arthur Campbell that

The People, in this Part of the Country, are made very uneasy by the Reports from below, that the Assembly will adopt some Measures, respecting British Debts, which may infringe the Articles of the Treaty, and involve us in a new Quarrel with Great Britain; who might make Reprisals upon our Coasts or Shipping, or station a Frigate or two to block up our Bay, without Danger of offending the late belligerent Powers in Europe, or even the other American States; who probably wou'd not be displeased to see us suffer for our Temerity & Folly...but I trust that more prudent & dispassionate Councils will prevail, than to risque the smallest Infraction of the Treaty.138

In the same letter, Mason railed against attempts by some to maintain laws suspending the payment of debts, laws which are "destructive of all public Faith & all Confidence between Man & Man, and flagrant Violations of the Constitution, [they]
must disgust the best & wisest Part of the Community, cause a
general Depravity of Manners & Morals, and finally produce
Anarchy & Public Convulsion."139

It is important to note that George Mason had earlier
represented Fairfax County in the House of Delegates. Fairfax
County was part of the Northern Neck voting bloc and was
vehemently in favor of honoring the treaty and the payment of
debts. Mason’s assertion that "The People, in this Part of
the Country, are made very uneasy," is confirmed in an address
from the citizens of Fairfax to their representatives in the
House of Delegates which demands "that you oppose, to the
utmost of your power, the smallest infraction of the late
Treaty of Peace, either with respect to the payment of debts,
or in any other matter whatsoever."140 Like Mason, the
citizens of Fairfax feared a return of "the calamities of war,
or the danger of reprisals...."141 and requested that the
names of those who opposed the treaty be published "so the
people may, at least, be enabled to distinguish their
country’s foes from its friends, and hereafter to separate the
tares from the corn."142 On June 10, 1783, Thomas Mason, a
representative of nearby Stafford County, reassured his

139Ibid.

140The Virginia Gazette (Richmond), June 7, 1783. Microfilm, Colonial Williamsburg Archives.

141Ibid.

142Ibid.
constituents "that no private interest of my own activated me [to run for election]," that "the fears of some of you, that I would endeavor to prevent the Treaty of Peace from being ratified, or the payment of British debts, were groundless; no man was more desirous of a peace, or entertained a more fixed regard for the strict rules of justice than myself, and my disposition is not vindictive...."143

On December 27, 1783, the freeholders of Frederick, yet another county in northern Virginia, informed its representatives in the House of Delegates:

That the Provisional Articles of Peace...are highly honorable and advantageous to America, and ought to be complied with in the most liberal manner...that any person who shall endeavour to obstruct the execution of the Treaty in America, ought to be considered as an enemy to his country.144

The freeholders then pinpoint who these enemies are:

Our internal peace we conceive is most likely to be disturbed, either by the clashing interests of the several States

143 VGAA June 14, 1783. Microfilm, Colonial Williamsburg Archives.

144 Ibid., December 27, 1783.
in the union; or by the arts and intrigues of debtors and others of desperate fortune, who may hope to avail themselves of times of commotion.\textsuperscript{145}

Echoing Mason’s fears of a "general Depravity of Manners & Morals," the citizens of Berkeley County, bordering Frederick, lamented that,

The sentiments expressed in some of the instructions, tend to stamp our national character with an impression very different from the disposition of our citizens in general. If they are the sentiments of a majority of a County, we can but lament the depravity of manners. It rather appeared to us the language of persons accustomed [sic] to prostitute their speech for hire, to perplex the truth. Their reasoning appears to us as full of sophistry, as their sentiments are inimical to the true interest of their Country. They at last proclaim the real motives of their whiggism....\textsuperscript{146}

While the counties of northern Virginia stood firmly

\textsuperscript{145}Ibid.

\textsuperscript{146}Ibid., December 27, 1783.
opposed to a suspension of debts, there is evidence that in such counties as Essex, to the south, there were individuals publishing "seditious pamphlets, and other writings, circulating amongst us inculcating doctrines...fatal to this country."147 Why, "Conservator Pacis" asked his fellow citizens, "should you involve yourselves in new troubles, to rescue those whose principle design (as it now appears) in bringing about the revolution was to extricate themselves from their debts at the expense of your lives and fortunes?"148

"Shall our glorious revolution," asked "A Friend to Virtue and Republicanism," "founded upon the virtuous determination of men...be vilely stained with the charge of producing the sordid, the wicked effect of enabling a dishonest debtor to cheat his creditor?"149

While many decried the ascendancy of "a few scurvy, sneaking debtors,"150 the citizens of Caroline openly expressed their condemnation of the treaty, and called for the suspension of debts. The citizens of Caroline who had declared that only "violence" could "remove the galling yoke" of British creditors, quickly became the center of resistance to the treaty. In October of 1783, a number of "respectable" inhabitants of Caroline County complained of the "impolicy,

147Ibid., October 25, 1783.

148Ibid.

149Ibid., November 29, 1783.

150Ibid.
injustice, and oppression of paying British debts," because, "it would take from the faithful vindicator of our liberties, that remnant saved from the depredations of the enemy, for the sake of enriching those, already groaning under the weight of plunder...."\textsuperscript{151} With reasoning that was to soon embroil the entire state in heated debate, the citizens of Caroline declared that "because no retribution having been made or proposed by the British for their licentious plunderings and devastations, and the restoration of our property according to the terms of the provisional articles being withheld, no ligament binds us [to pay the debts]."\textsuperscript{152}

On June 7, 1784, the issue of captured slaves was officially used as an example of this injustice. On this day, the House of Delegates resolved:

That an inquiry ought to be instituted concerning an infraction on the part of Great Britain, of the seventh article of the definitive treaty of peace between the United States of America and Great Britain, so far as the same respects the detention of slaves and other property, belonging to the citizens of this Commonwealth.

On the same day, Madison introduced a resolution that:

\textsuperscript{151} Ibid., October 25, 1783.

\textsuperscript{152} Ibid.
every act...now in force in this Commonwealth, as prevents a due compliance with the stipulations contained in the definitive treaty entered into between Great Britain and America ought to be repealed.

Patrick Henry and the pro-debtor bloc soundly defeated Madison's resolution.153

On June 23, the state of Virginia publicly proclaimed its refusal to comply with the Treaty of Peace until compensation was made for captured slaves. The refusal stemmed from an investigation by Patrick Henry which was based solely on "a single person, a legislative colleague who had returned from an unsuccessful attempt to locate lost slaves in New York."154 On the basis of such scant evidence, the House of Delegates resolved:

That there has been an infraction on the part of Great Britain, of the seventh article of the Treaty of Peace between the United States of America and Great-Britain, in detaining the slaves and other


154Ritcheson, Aftermath of Revolution, p.68.
property of the citizens of the United States.\footnote{VGAA, July 10, 1784. Microfilm, Colonial Williamsburg Archives.}

The delegates further resolved:

That the delegates representing this State in Congress, be instructed to lay before that body...a remonstrance to the British court, complaining of the...infraction of the treaty of peace, and desiring a proper reparation of the injuries consequent thereupon...that a just regard to the national honor and interest of the citizens of this Commonwealth, obliges the Assembly to withhold their co-operation in the complete fulfillment of the said treaty, until the success of the aforesaid remonstrance is known, or Congress shall signify their sentiments touching the premises.\footnote{JHD, 1784, pp. 72-73.}

Further they declared:

That so soon as reparation is made for the aforesaid infraction...such acts of the Legislature passed during the late war, as inhibit the recovery of British debts, ought to be repealed, and payment
thereof made in such time and manner as shall consist with the exhausted situation of this Commonwealth.\textsuperscript{157}

The heated emotions aroused by the debate is evident in the case of John Warden, who was called before the House a week after the passage of the June 7 resolution. He acknowledged,

that on a mistaken opinion that the House of Delegates had voted against paying of British debts agreeable to the treaty of peace...I said, that if it had done so, some of them had voted against paying for the coats on their backs. A committee of the House judging this expression derogatory to the honor and justice of the House, I am sorry for the offence I have given....\textsuperscript{158}

Warden, however, was by no means alone in his disapproval of making compliance with the treaty contingent on compensation for slaves. Three days after the June 23 resolution, the \textit{Virginia Gazette, or the American Advertiser} carried a commentary by "Laelius" who denounced those Virginians who "seek a pretext from a supposed violation (for

\textsuperscript{157}Ibid.

\textsuperscript{158}JHD, p.57.
we have no official accounts of it) of the Provisional Treaty; and to violate the foederal constitution."¹⁵⁹ "Laelius" asked "What will then be the probable consequence of these resolutions? Plainly this; we shall be compelled to do with disgrace six months hence, what we might now have done with safety and honor." "Will the virtuous yeomanry of this Commonwealth," the writer asked, "suffer this garden spot of the world to be overwhelmed by the calamities of war, for an inconsiderate part of their citizens, who may discover dispositions to sacrifice to their own convenience the public honor and safety?"¹⁶⁰

On July 10, the same newspaper carried the arguments of others who found fault with the resolution of June 23, including delegates Burwell Bassett, from New Kent County, and William Fitzhugh, delegate for Stafford County. Divided into ten points, their statement is the best summary available of the views of those who wanted to comply with the treaty. They opposed the resolution, they explained, because:

1st. Because the Resolutions raise and continue impediments to the recovery of British debts, in violation of the Treaty of Peace...

2d. Because...the United States in Congress

¹⁵⁹VGAA, June 26, 1784. Microfilm, Colonial Williamsburg Archives.

¹⁶⁰Ibid.
assembled...ratified and confirmed the said articles, and every part and clause...

3d. Because Congress enjoined on the Citizens of the United States, the full performance of the Treaty so ratified...

5th. Because although it is admitted that Sir Guy Carleton did refuse to deliver up the Negroes at New York...yet that there is not any evidence...that his Sovereign has, or will approve of his conduct...

6th. Because if the British nation had committed an unequivocal breach of the Treaty, it would be far more wise and magnanimous in us to recall them to a sense of their duty, by a faithful observance of it, than by a still more flagrant breach and ill faith on our part, to justify and warrant their conduct; the establishment of our character among nations for inviolable faith and honor being of the highest importance to us.

7th. Because the proposed application to Congress is unnecessary...that Congress has already instructed their Ministers in Europe to demand payment of the British Court, for all Negroes and other property belonging to the Citizens of the United States, which were carried away from New-York.
8th. Because continuing legal impediments to the recovery of British debts, in direct violation of the Treaty, will subject the property of the Citizens of this State to be seized by the British Government, and is therefore a proceeding full of temerity, violence and damage.

9th. Because the obvious tendency of these measures, is to exonerate the individual debtors, by burthening the Citizens of this State at large with the payment of British debts.

10th. Because as Congress has...enjoined...all the Citizens of the United States a strict...adherence to every Article of the Treaty...the last Resolution is an evident evasion.\footnote{VGAA, 7/10/84. Microfilm, Colonial Williamsburg Library.}

In the aftermath of the June 23 resolution, many Virginians expressed similar concerns over the effects Virginia’s belligerent stance would have on the United States as a whole. John Marshall, in a letter dated December 2, 1784, told James Monroe that,

I wish with you that our Assembly had never passed those resolutions respecting the British debts, which have been so much the subject of reprehension
throughout the States... because I ever considered it as a measure tending to weaken the federal bands which in my conception are too weak already.162

James Madison, who failed to pass a bill enabling British subjects to recover their debts on December 19, 1785,163 also expressed concern that,

In the course of the debates no pains were spared to disparage the Treaty by insinuations agst. Congs., the Eastern States, and the negotiators of the Treaty, particularly J. Adams. These insinuations & artifices explain perhaps one of the motives from which the augmentation of the foederal powers & respectability has been opposed.164

Ralph Wormeley Jr., disparaging those who used the slave issue to postpone the payment of debts, complained that,

the crude state of politics in this country is what one would have expected from a government so


163JHD, 1785, p.99.

crudely formed...what is most to be regreted [sic] is the bad laws, bad policy, and unequal administration of justice:...here too the tricks of infamous and wicked demagogues have their full effects...the payment of british debts is a measure most abhorent [sic] from the general idea of those who have hitherto ruled...illogical reasoning of this sort is readily [sic] adopted and answers every purpose that could be drawn from the fairest premises and the most legitimate conclusion....

While debate over the slave issue was centered in Virginia, the controversy transcended its borders. As early as September 1782, James Madison sent instructions to the peace commissioners in Paris, asking them to "offset claims in behalf of the loyalists with counterclaims for slaves...." Oddly enough, while a detailed list of slave losses was promised by Madison, no list was ever compiled. On April 27, 1785, nearly three years later, and two years after the fact, the Continental Congress asked the Secretary for Foreign Affairs "to employ some person...to collect from Genl. Washington a list of the Negroes carryed [sic] off from New York...to the end that our Minister at the Court of London may

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166 Ritcheson, Aftermath of Revolution, p.71.
be furnished with a Copy of the said list as early as possible."\textsuperscript{167} Two days later, John Adams wrote Congress from London urging the "Necessity of sending me every Information...which can be obtained [of] the Numbers and Value of the Negroes and other Property carried off in violation of the Treaty."\textsuperscript{168} As late as 1786, William Grayson of Prince William County still found it necessary to ask that "the Secretary for foreign affairs be directed to transmit to the Executives of ye States, abstracts of the numbers, names and owners of negroes carried away by ye British."\textsuperscript{169} That the Secretary for Foreign Affairs was relied upon to provide data, presumably from foreign sources, that was unavailable in the United States highlights the inexplicable failure of those seeking compensation to have better prepared the case. In the absence of such a list, one wonders how seriously slave owners desired compensation. From a cynical point of view, it benefited debtors to keep the extent of the slave losses a mystery to ensure that the issue would never be resolved.

John Adams was the first American diplomat to broach the subject of captured slaves with the British after the war. On May 13, 1785, Adams "mentioned the negroes [to the Duke of Dorset] and asked why the treaty was so little attended to in

\textsuperscript{167}JCC, Vol.XXIX, 648.

\textsuperscript{168}Calendar of the Correspondence of Richard Henry Lee and Arthur Lee, American Philosophical Society. Microfilm, Colonial Williamsburg Archives.

\textsuperscript{169}JCC, Vol.XXX, 353-354.
When asked if a great number of slaves had been taken, Adams, without a definitive list of lost slaves, replied "a very great number." Adams then asked Dorset to take pity on Virginia's debtors on the basis of a rather specious, though oft repeated, argument that the loss of slave labor:

made it still harder upon the American debtors, and, indeed, made it perfectly just for them to withhold [sic] payment, because that the property of many of them was thus wrongfully withheld from them; property by which they might have been enabled to pay at least much of their debts.¹⁷²

As Adams was to tell a pair of Glasgow merchants a month later, "If these negroes had been restored according to the treaty, they would have been at work to earn money to pay their masters debts, but the carrying them off was a double loss to the owner."¹⁷³ But the merchants revealed the flaw in Adams' logic when they pointed out that they were more concerned with the debts of a small farmer who did not lose

¹⁷¹ Ibid.
¹⁷² Ibid.
slaves during the war, but who might flee to Kentucky, than those of the large plantation owner. Adams admitted, "this was new to me."174

The country paid dearly for Adams' failure to respond to the duke of Dorset's inquiry about a list of captured slaves. Adams reported that, while casually mentioning the issue to William Pitt in a meeting on August 25, 1785, Pitt admitted "that the carrying off the negroes was so clearly against the treaty that they [the British] must take measures to satisfy that demand, if we [the Americans] could prove how many were carried off."175 Adams, no doubt surprised by Pitt's response, was forced to acknowledge that Pitt would have to rely on the data compiled by British general Sir Guy Carleton.176 As Charles R. Ritcheson points out in Aftermath of Revolution, "If Adams had been able to take advantage of Pitt's opening, it is altogether possible that a settlement of the slave issue might have been achieved at the very outset of the mission."177

Clearly, the British were eager to settle the issue of captured slaves by offering compensation if the Americans could make valid claims. The matter of payment for slaves, indeed, seemed of little consequence to either the British or

174Ritcheson, Aftermath of Revolution, p.74.
176Ibid.
177Ritcheson, Aftermath of Revolution, p.74.
the majority of Americans. In 1784, when James Monroe, a Virginian, wrote to Thomas Jefferson urging a delay in the payment of debts, "he made not the slightest use of the slave issue."\textsuperscript{178} Jefferson wrote Monroe in May of 1786 that the debts owed to Britain would have to be paid, "or our character stained with infamy."\textsuperscript{179} As to the issue of compensation for captured slaves, "it is a bagatelle which if not made good before the last instalment becomes due, may be secured out of that...."\textsuperscript{180} Indeed, there is every reason to suspect, as Rufus King did, that,

the subject of British Debts, the payment for the negroes and the Posts, were all of no value or consequence to G. Britain-that the two former were really of small consideration to us. But that our nation was young, that we were still new in the management of national affairs-and that it was not as easy with us, as with them, to decide questions of this nature, especially when they mingle with them private interest and political prejudice.\textsuperscript{181}

\textsuperscript{178} Ritcheson, Aftermath of Revolution, ff.3, p.426.


\textsuperscript{180} Ibid.

In February of 1786, after receiving a detailed list from Lord Carmarthen of numerous violations of the treaty of peace by states such as Virginia, Congress, in an attempt to maintain cordial relations between the United States and Great Britain, resolved that the state legislatures had no right to interpret a national treaty, nor did they have the right to counteract "the operation and execution of the same, for that on being constitutionally made, ratified, and published, they become in virtue of the Confederation, part of the law of the land, and are not only independent of the will and power of such Legislatures, but also binding and obligatory on them."  

While Congress took a hard line with Virginia over the suspension of her debts, some individuals sought to solve the problem in a more conciliatory way. In a brilliantly original attempt to resolve the issue, John Adams asked, "suppose [Virginia] should undertake to pay herself for her bank stock and negroes carried off after the treaty, by accepting security for it from her own citizens, who are debtors to British subjects, and giving discharges to those debtors, or engaging to stand between them and the claim of the creditor[?]" 

While Congress failed to consider Adams' plan, John Jay

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attempted to approach the issue in a more systematic fashion than anyone had to that point. In October of 1786, Jay drew up three classes of slaves.\textsuperscript{184} The first were those slaves captured by the British during the war. These, Jay argued, by the laws of war became the property of the captors. Jay revealed his personal feelings about slavery, feelings that undoubtedly influenced his future dealings with the British over this issue, when he asked:

\begin{quote}
Whether men can be so degraded as under any circumstances to be...denominated [property] and under that idea capable of becoming booty, is a question on which opinions are unfortunately various, even in Countries professing Christianity and respect for the rights of mankind.\textsuperscript{185}
\end{quote}

The second class of slaves were those who went behind British lines with their Loyalist masters. These obviously remained in the possession of their masters and did not fall under the treaty. The third class were those who, "confiding in proclamations and promises of freedom and protection, fled from their Masters without, and were received and protected within, the british Camps and lines."\textsuperscript{186} These slaves, Jay

\begin{footnotes}
\textsuperscript{184}JCC, Vol.XXXI, 863.
\textsuperscript{185}Ibid.
\textsuperscript{186}Ibid.
\end{footnotes}
argued, "could not by merely flying or eloping extinguish the right or title of their Masters."\textsuperscript{187} However, while these slaves were taken in violation of the treaty of peace, in an aside that must have infuriated Virginians, Jay admitted "the circumstances under which these last mentioned Negroes were carried away make a strong impression on the mind of your Secretary, and place that transaction...in a point of view less unfavourable to Britain than it appears to his Countrymen in general."\textsuperscript{188} With the fate of the slaves in mind, Jay reasoned that the only humane resolution to the controversy was for Great Britain to pay American slave owners for the loss of slaves of the third class: "In this way neither [slave or master] could have just cause to complain; for although no price can compensate a Man for bondage for life, yet every Master may be compensated for a runaway Slave."\textsuperscript{189} Jay then directly challenged the Virginia House of Delegates when he asked the minister to Great Britain to have commissioners estimate the value of the slaves and to compensate the Virginians but only after "all the Acts and parts of Acts existing in the several States, and which violate the treaty, are repealed, and due notice thereof given."\textsuperscript{190}

\textsuperscript{187}Ibid.
\textsuperscript{188}Ibid.
\textsuperscript{189}Ibid.
\textsuperscript{190}Ibid.
After receiving this remonstrance from Congress, some Virginians demanded compliance, while others became more defiant. Indeed, the years following the ratification of the United States Constitution saw the basis of the slave dispute expand from a clash over payment of debts to Great Britain, into a debate over strong federal government versus the sovereign rights of individual states.

In Virginia, those who called for compliance with the treaty of 1783 were often accused of betraying the interests of their state. Edmund Randolph wrote in April of 1787 that, "such is the lamentable conflict between justice and knavery, that in many instances he is branded with the appellation of toryism, who declares it to be right honestly to pay our debts." An acquaintance of James Madison admitted that "matters here wear a very disagreeable aspect" and that the mood of his fellow Virginians made him "apprehensive that the act of congress will be but coolly [sic] received." Then,

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192J. Dawson to Madison, 4/15/87, Ibid.
in a statement that reveals what must have been the darkest fear of many Virginians, the acquaintance told Madison, "I am informed that in some of the low counties they talk boldly of following the example of the insurgents in Massachusetts."\(^{193}\)

The insurgents to whom he referred were those who took part in Shays's Rebellion in western and central Massachusetts from August 1786 to February 1787.\(^{194}\) Many small land owners in Massachusetts, led by Daniel Shays, armed themselves when their assets were seized for overdue debts owed to American creditors.\(^{195}\) This "unprovoked insurrection" by "wicked and ambitious men"\(^{196}\) frightened many conservatives in Massachusetts, and it seemed in April of 1787 that there could be a similar insurrection by "wicked and ambitious men" in Virginia as well.\(^{197}\)

Many had these fears confirmed when, on December 3, 1787, 

\(^{193}\)Ibid.  


\(^{195}\)D.A.H., p.272.  

\(^{196}\)Ibid.  

\(^{197}\)The leader of these "wicked men" in Virginia was no mystery to James McClury, who wrote Madison in August of 1787 that "Mr. Henry has openly express'd his disappointment of the circular letter of Congress, respecting the payment of British debts, & that he has declared his opinion that the Interests of this state cannot safely be trusted with that body." James McClury to James Madison, August 5, 1787. Papers of James Madison, Presidential Papers Microfilm. Reel 2. Microfilm, Wayne State University Library.
the House of Delegates, after "three Days of warm debate," enacted a bill whereby:

such of the acts or parts of acts of the legislature of this commonwealth, as have prevented or may prevent the recovery of debts due to British subjects, according to the true intent and meaning of the said treaty of peace shall be and are hereby repealed.

Provided, That this act shall be suspended until the governor with the advice of council shall by his proclamation, notify to this state, that Great Britain...[is] taking measures for the further fulfilment [sic] of the said treaty by delivering up the negroes belonging to the citizens of this state...or by making such compensation for them as shall be satisfactory to congress.

"When the question was decided," Archibald Stuart reported, "disappointment was painted in striking colours in the

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199 William Waller Hening, ed., The Statutes at Large (Richmond, VA: George Cochran, 1823), Vol. XII, 528.
Countenances of the Minority."200

There are many hints as to the course of the debates in the House of Delegates on this issue. It was originally decided on November 17, "against the utmost exertions of Mr. Henry,"201 that the debts should be paid as soon as other states complied with the treaty.202 But, on December 3, Henry managed to win passage of the bill stipulating that payment would remain contingent on compensation for captured slaves. The powerful, and often intimidating, oratory of Patrick Henry almost certainly played a crucial role in this outcome. James Monroe told Madison that George Mason and George Nicholas led the party calling for compliance with the treaty. However, Nicholas, "who had been most active & zealous in the business chang'd his former ground in every instance and acceded to the proposition of Mr. Henry...owning himself convinc'd by the arguments that had been us'd."203

The issue of slaves and debts was set aside for two years, while Virginia and the rest of the country debated the merits of the new national constitution. The pro-debtor counties were largely against ratifying the constitution, and


201 Ibid.

202 JHD, 1787, p.51.

while the issue of paying debts was not the only reason for opposition to the Constitution in Virginia, it was undoubtedly one of them. After another attempt to repeal laws suspending the payment of debts failed in 1788, Edmund Randolph suspected that "much of the repugnance to this motion will be founded on the danger of every defendant being hurried sooner or later to the seat of the [new] federal government."204

George Washington, president under the new constitution, was the first member of the federal government to address the need for resolving the slave issue. On October 13, 1789, Washington asked Gouverneur Morris to travel to London to inquire whether Great Britain had any intention of complying with the treaty of 1783.205 Among other points, Washington asked Morris to "Remind them of the article by which it was agreed, that negroes belonging to our citizens should not be carried away, and of the reasonableness of making compensation for them."206 Frustrated with the vagaries surrounding this issue, Washington asked that Morris, "learn with precision, if possible, what they mean to do on this head."207

When Morris met with the Duke of Leeds on March 29, 1790,


206 Ibid., p.4.

207 Ibid.
he added a new dimension to the slave issue when he argued that American debtors needed to be paid for their slaves because they "had formed a reliance on such payment for the discharge of debts contracted with British merchants...that the suspension of this resource had occasioned a deficiency of means, so that their conduct had been dictated by an overruling necessity."\textsuperscript{208} When the Duke of Leeds showed a "little embarrassment," it was undoubtedly because he thought the British had already made their point of view on this issue clear to John Adams in 1785.\textsuperscript{209} Leeds admitted that "as to the affair of the negroes, he had long wished to have it brought up, and to have something done, but something or other had always interfered. He then changed the conversation, but I [Morris] brought it back, and he changed it again."\textsuperscript{210}

On May 25, Morris met with the Prime Minister William Pitt and again made demands for British compensation for captured slaves.\textsuperscript{211} When Morris claimed that American slave owners could produce written evidence of how many slaves had been taken, Pitt "exclaimed at this, as if it were an exaggerated statement."\textsuperscript{212} Pitt, in his attempt to resolve

\textsuperscript{208}\textit{American State Papers}, Volume I (Washington, D.C.: Gales and Seaton, 1833), 122.

\textsuperscript{209}\textit{Aftermath of Revolution}, p.97.

\textsuperscript{210}\textit{American State Papers}, Vol.I, 123.

\textsuperscript{211}\textit{Aftermath of Revolution}, p.100.

\textsuperscript{212}Ibid.
what was surely a very minor issue in his eyes, told Morris that both compensation for slaves and payment of debts should occur simultaneously. Morris replied "you wish to make a new treaty, instead of complying with the old one." When Pitt said that was true, Morris rebuffed him, saying "even on that ground I did not see what better could be done, than to perform the old one." 

In the Spring of 1790, with diplomatic negotiations at a stand still, British creditors took advantage of the new federal courts and sued out writs against debtors. Still, although the United States Circuit Court, Virginia District, heard cases involving debts of more than $500, creditors who wished to sue for less had recourse only to state courts which remained closed to British creditors. 

Even in the federal courts, the issue of captured slaves remained a potential plea for defendants in trials for debt. Sending Patrick Henry "a rough Draft of the pleas that I have

213 As to the issue of captured slaves, Morris admitted, "Its smallness seems to have kept it out of discussion. Were other difficulties removed, they would probably make none of this article." Gouverneur Morris to George Washington, December 15, 1790, Paul Leicester Ford, ed., The Writings of Thomas Jefferson, Vol.V (New York: G.P. Putnam's Sons, 1895), 262.


215 Ibid.

216 Ibid.


filed in several [suits] that are depending by British Subjects in the federal Court,"219 William Duval explained, "I conceived it might be necessary to plead the Infraction of the Treaty."220 The historian Charles Hobson has questioned whether attorneys like Duval "seriously believe[ed] they could win one or more of these special British debt pleas," or whether they used them "simply to drag out the proceedings as long as they could?"221 Indeed, it seems likely that individual lawyers were using the plea of British infractions of the treaty for the same reasons other Virginians had been using this plea for nearly a decade:

to keep the cases tied up in court as long as possible in the hope that diplomacy might resolve the British debt problem...[or] at the very least the long postponement of a decision by the court would give the debtors breathing space to recover some measure of prosperity and regain the means of paying their debts.222

As they finally faced the grim prospect of meeting their


220Ibid.


222Ibid., p.22.
creditors in court, Virginians quickly reasserted their right to compensation for lost slaves before any debts would be paid. No doubt attempting to stave off the encroaching creditors, a group of citizens from Princess Anne, Norfolk, Nansemond, and Isle of Wight counties presented a memorial to the House of Delegates "setting forth, that a considerable number of their slaves were taken from them by the British armies during the late war...and praying that such measures may be adopted as are best calculated to obtain redress."\textsuperscript{223} In November 1791, a week before the suits of British creditors came before the federal courts, the Virginia legislature attempted to pass resolutions "protesting against the recovery of debts by British subjects until Great Britain had...paid for the Negroes carried away."\textsuperscript{224} The resolution failed, and, instead, "a set of resolutions, milder in tone, were sent to the Virginia Senators, urging Congress to come to the relief of the state."\textsuperscript{225} Congress, however, did nothing.\textsuperscript{226}

The debt cases were tried despite these attempts at delay, and on November 23, 1791, the first of these cases, Jones v. Walker, was heard before the Virginia Supreme Court.\textsuperscript{227} Patrick Henry, appropriately enough, spoke

\textsuperscript{223}JHD, 1791, p.21.
\textsuperscript{224}Harrell, Loyalism in Virginia, p.163.
\textsuperscript{225}Ibid., p.163.
\textsuperscript{226}Ibid.
\textsuperscript{227}Ibid., p.165.
brilliantly for the defence before a crowded court room. The lawyer for the plaintiff charged that Virginia had no right to suspend the payment of debts during the American Revolution because it was not an independent state at the time. Henry, no doubt playing to his large audience, ridiculed this charge on the grounds that Virginia was an independent state "before the monarch of that little island in the Atlantic gave his puny assent to it." Henry argued that the debts had been forfeited when Great Britain had broken the treaty by carrying away slaves and that, "even if Great Britain had not broken the treaty of 1783, that treaty could not revive the class of debts at issue, for the treaty said bona fide debts; the debtor had paid the sum at issue into the loan office of Virginia under a law of Virginia and had thereby discharged the debt." The court's verdict was in favor of the defendant.

Despite this initial defeat, verdicts began gradually

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228 Ibid.
229 Ibid.
230 Ibid.
231 Ibid., p.166.
232 American State Papers, Vol. I, 317. Patrick Henry's reputation as a lawyer was so enhanced by this victory that one admirer wrote in March 1792, "some of the gentleman [sic] who was interested in the paym't of british debts" asked that Henry "come forward again in behalf of your countrymen who look up to you as their rock of salvation." D.L. Hylton to Patrick Henry, March 6, 1792, Patrick Henry Papers, Library of Congress. Microfilm, Colonial Williamsburg Archives.
turning in favor of creditors. In May 1793, George Wythe ruled in the Virginia High Court of Chancery that "payments into the state loan office did not discharge debts due British creditors."233 That same year, of sixty-eight debt cases, creditors won fifty-two.234 In 1794, sixty-five out of ninety-one debt cases were decided in favor of creditors, and in 1795 ninety-eight out of 118 received the same verdict.235 By 1797, British creditors were winning nearly all of their suits, even in state and county courts.236

While progress was being made in favor of creditors, American slave owners had still received no compensation for lost slaves. On November 28, 1793, the Virginia assembly sought to reassert its long standing position on the issue when it asked senators James Monroe and John Taylor to:

inquire into...such measures as have been adopted by the executive of the United States to obtain a complete compliance with the said treaty from Great Britain...and that they also endeavor to effect such measures...as will suspend the operation and completion of the fourth article of the said

234Ibid., p.371.
235Ibid.
236Ibid., p.373.
treaty, until these United States shall be well assured of a satisfactory compliance with the said articles.237

On May 6, 1794, Senator Monroe, seconded by Taylor, duly moved that the fourth article of the treaty be suspended.238 An account of the ensuing debate, recorded by Rufus King, reveals the extent to which the issue of compensation for captured slaves had become a source of sectional tension.239 Senator Caleb Strong of Massachusetts pointedly remarked, "In the eastern states the Treaty has been complied with," the suspension of article IV, "will be partial, applying to some and not to other states."240 Senator James Jackson of Georgia believed, "the measure appears to proceed from an obedience [sic] to instruction rather than from the Judgment of the Movers."241 "Is it prudent," Jackson wondered, "to take irritating measures which may produce a sacrifice of our ships

237 JHD, 1793, pp. 124-125.


239 Although the sectional lines in this controversy usually pitted the slave owning states against the more commercially oriented northern states, in March 1794, Representative Clark of New Jersey moved that an embargo on all commercial intercourse with Great Britain should be continued until, among other things, American slave owners were reimbursed for lost slaves. "By agreement of both houses the embargo was continued for a second month." Samuel Flagg Bemis, The Jay Treaty: A Study in Commerce and Diplomacy (New Haven, CN: Yale University Press, 1962), p.196.


241 Ibid.
and Cargoes in the hands of the British?"242 John Taylor delivered a fiery reply:

I disapprove of the mild and supplicating course marked out for America. We shall proceed until the People can no longer be restrained—With regard to Justice, the Law of nations requires the strong nation to perform the first act—we have a right to require G.B. to perform the Treaty on her Part. Besides we ought in the south to be attended to as well as our Bretheren [sic] in the east. Our negroes and the Posts shd. be attended to as well as the Spoilations on our Commerce.243

Taylor then angrily refuted the implications that lay behind the accusation that he and Monroe were acting "from an obedience to instruction,":

We are not influenced by our being Debtors—I never knew a Legislature in Virginia in wh. 1/5 of the members were British Debtors. I owe nothing, nor do I believe that any of my Relations which are numerous owe 20 pounds british money to a British

242Ibid.
243Ibid.
Despite the defense of Virginia's motives, and the appeal to sectional support, "When the question was put," wrote John Adams, "forteen [sic] voted against it, two only, the Virginia delegates, for it, and all the rest, but one, ran out of the room to avoid voting at all, and that one excused himself." 245 In the wake of this humiliating vote, Virginians also learned with apprehension that President Washington had chosen John Jay, the man who had lectured Congress about the inhumanity of slavery, to resolve any outstanding differences between the United States and Great Britain.

In his instructions to Jay, Secretary of State Edmund Randolph, a Virginian, did not mention resolving the slave issue. 246 Yet, upon arriving in London, Jay was almost immediately forced to contend with the issue. On July 30, 1794, Jay wrote Randolph that:

...the minister is (if I may so say) besieged by our British creditors. The subject of the debts is attended with difficulties. The minister has been

244 Ibid.


informed that the law in Virginia relative to the evidence of book debts has, since the war, been made more strict than it was before. If the law has been thus changed...there is room for complaint. I wish to have exact information on this head.247

On September 13, Jay wrote Randolph that:

Great Britain understood the stipulation contained in that article [VII], in the obvious sense of the words which expressed it, viz: as an engagement not to cause any destruction, nor to carry away any negroes or other property of the American inhabitants...that no alteration in the actual state of property was operated...that every slave, like every horse, which escaped or strayed...and came into the possession of the British army, became, by the laws and rights of war, British property; and, therefore, ceasing to be American property....248

Randolph admitted that, "the reasoning of Lord Grenville, in relation to the negroes, is so new to me, as are his


248Ibid., p.485.
observations on the first aggression, that their accuracy cannot be assented to without the fullest reflection."\(^{249}\)

Randolph was "extremely afraid that the reasoning about the negroes will not be satisfactory. Indeed, I own that I cannot myself yield to its force."\(^{250}\) If Jay failed to gain some concession on this issue from the British, Randolph wondered, "will not some quarters of the Union suppose themselves neglected?"\(^{251}\) Despite these warnings, Jay returned to the United States with a treaty ensuring that creditors in Great Britain would receive satisfaction for American debts but making no mention of compensation for slaves taken by the British in the course of the American Revolution.\(^{252}\)

As Randolph feared, reaction to the treaty was one of almost universal outrage. Taken aback by the anger of those who thought compensation for slaves should have been demanded, Jay wrote Randolph on February 6, 1795, that:

\(^{249}\)Ibid., p.501.

\(^{250}\)Ibid., p.509.

\(^{251}\)Ibid.

\(^{252}\)Regarding British creditors, the treaty stipulates that: "the United States of America will make full and complete satisfaction to the said creditors; and that for this purpose, commissioners shall be appointed and authorized to act in America...five commissioners shall be sworn to hear all such complaints...and impartially to determine the same, according to the true intent of this article, and of the treaty of peace." Ibid., p.488.
In considering the treaty it will doubtless be remembered, that there must be two to make a bargain. We could not agree about the negroes. Was that a good reason for breaking up the negotiation? I mentioned, in a former letter, that I considered our admission into the [West Indian] islands as affording compensation for the detention of the posts, and other claims of that nature. In that way we obtain satisfaction for the negroes, though not in express words. 253

Alexander Hamilton attempted to persuade Americans of the propriety of Jay's treaty by writing pamphlets as "Camillus," arguing that "some 2,000 slaves worth at the most $400,000 was hardly a matter over which two countries ought to fall out." 254 Southern slave holders were not convinced. In June 1795, Senator Jacob Read of South Carolina "moved to amend the motion for ratification to demand compensation for Negroes and other property carried off by British armies." 255 This motion was as much an attempt to draw Southern Federalists to the

253 Ibid., p. 518.

254 John C. Miller, Alexander Hamilton: Portrait in Paradox (New York: Harper & Brothers, 1959), p. 430. This quote illustrates the great discrepancies in estimates as to how many slaves were taken by the British. Compare Hamilton's figure of 2,000 slaves to the 30,000 mentioned by Jefferson.

Republican party as it was a sincere effort to gain compensation for captured slaves.\textsuperscript{256} After Read was persuaded to withdraw his motion, John Brown of Kentucky reintroduced the proposition only to have it voted down fifteen to twelve.\textsuperscript{257}

But the greatest resistance to the Jay Treaty, in relation to the slave issue, came, of course, from Virginia. In August 1795, meetings were held throughout the state to gather signatures on petitions to President Washington, whose approval of the treaty was required for final ratification.\textsuperscript{258} Sussex County resolved that, "the proposed Treaty of Amity Commerce and Navigation...is replete with principles, stipulations and concessions...Degrading to the dignity...of America."\textsuperscript{259} Of the treaty's many faults, the resolution said one was that "our Citizens receive no satisfaction for the slaves and other property carried off by the plundering Armies of Britain."\textsuperscript{260} The citizens of Fredericksburg, allowing that "it is the duty of all good Citizens to pay due obedience to

\textsuperscript{256}Ibid.

\textsuperscript{257}Ibid.


\textsuperscript{260}Ibid.
the Laws of the Land,"\textsuperscript{261} believed, "That the treaty entered into by John Jay on the part of the United States...should be denounced and held in utter detestation by every American Citizen."\textsuperscript{262} This opposition to the treaty was partly "Because the payment of British Debts is guaranteed" and also "Because no notice is taken of, or demand made for a Compensation for the negroes or other property carried from New York in direct violation of an express article of the treaty of 1783."\textsuperscript{263}

But perhaps the most important of all the petitions came from Caroline County, the long standing leader of calls for British compensation for lost slaves. In a petition that reveals a great deal about the motives that lay behind the calls for compensation, the citizens of Caroline state that they are opposed to the treaty "because the legislature is restrained," and "cannot constitutionally repeal a treaty...," and, as a result, "the only mode of reprisal within the power of the United States" would be compromised should the British "commit the most outrageous violations of the treaty and the laws of nations, [and] again confiscate our vessels and our negroes, and even commence against us another predatorial..."

\textsuperscript{261}Citizens of Fredericksburg to George Washington, August 18, 1795, George Washington Papers, Presidential Papers Microfilm. Microfilm, Wayne State University Library.

\textsuperscript{262}Ibid.

\textsuperscript{263}Ibid.
war. But the time for petitions on the subject of captured slaves had passed and, on April 29, 1796, the House of Representatives, with Washington's blessing, ratified the treaty.

Any Virginian who continued to believe that the slave issue offered a viable argument for the suspension of British debts should have been convinced of its futility with the ratification of the Jay Treaty. For those who would not relinquish this tired argument, the ruling of the United States Supreme Court in the landmark case of Ware v. Hylton must have engendered at best resignation. In Ware the Supreme Court, in keeping with the Judiciary Act of 1789, "established the supremacy of federal treaty provisions over conflicting state laws." Though as late as 1798, many Virginia district court judges held "violent predjudices [sic]


265 Combs, Jay Treaty, p.186.

266 The Judiciary Act of 1789 states, "That a final judgment or decree in any suit, in the highest court of law or equity of a state in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of...or where is drawn in question the construction of any clause...of a treaty...held under the United States...may be re-examined and reversed or affirmed in the Supreme Court of the United States." Elder Witt, Guide to the U.S. Supreme Court (Washington D.C.: Congressional Quarterly Inc., 1990), p.300.

267 Ibid., p.7.
against the payment of British Debts,\textsuperscript{268} Virginia's law prohibiting the collection of debts by British creditors was in express violation of federal law, and the corresponding demand for lost slaves was finally abandoned with no compensation ever paid.

CONCLUSION

The issue of Virginian debts and British compensation for slaves in the years following the American Revolution is an outstanding example of how a single issue can become intricately bound to a host of others that have no direct relation. The core issue in this case is, of course, the seizure of American slaves by the British army during the American Revolution, which had little connection to the issue of outstanding debts until Virginians decided to unite the two. Once these two issues were linked, the problems inherent in solving either became correspondingly compound.

Politics in the eighteenth century was emotional and personal, and this characteristic only served to heighten the unyielding insistence on arguments that many today would see as capable of easy resolution. If, as Pitt suggested, debts had been paid by Virginians while, at the same time, Virginians were compensated for slaves, the issue might have been resolved quickly and with no ill feelings on either side of the Atlantic. If, as Jay suggested, the British had made monetary indemnification for slaves, which Virginians could put towards their debts, both the British creditor and the Virginia slave owner could be compensated, while allowing the
British to honor their promises of freedom to former slaves. But seemingly rational solutions to this crisis were rejected for reasons that were far too complex for simple logic. Virginians were proud people. The debts they had incurred derived largely from a search for individual independence. Many farmers had fallen into debt in an attempt to become land owners and escape the degrading status of tenant. Admittedly, many used the issue of captured slaves, and the suspension of debts, out of cynical opportunism, many were offended by the urgency with which the British pursued debtors so soon after the end of hostilities. While the argument that British seizure of slaves had made it impossible for Virginians to pay their debts seems highly exaggerated, we must look beneath the surface of such a claim. Whether Virginians were trying to avoid paying debts, or whether they simply did not like paying them to former enemies, the fact that the British had seized slaves, and had made no compensation for them, gave Virginians an excuse to deny their British creditors in a legally plausible way.

When the new federal government insisted that the issue of captured slaves was secondary to good relations with the British, Virginians simply refocused their frustration with the British government on the government of the United States. The fact that John Jay was openly opposed to slavery and sympathized with the British in debates with Virginia, only

269Main, "Sections and Politics in Virginia..."
served to aggravate a situation and enhance feelings that the federal government was more concerned with the commercial interests of the "east" than the slave owning interests to the south. Thus, a minor clause in the peace of 1783 became the basis for a controversy that brought two nations to loggerheads and challenged the authority of the new federal government.
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VITA

Philip George Swan Jr.


In July 1992, the author entered the College of William and Mary as an archaeological apprentice in the Department of History.