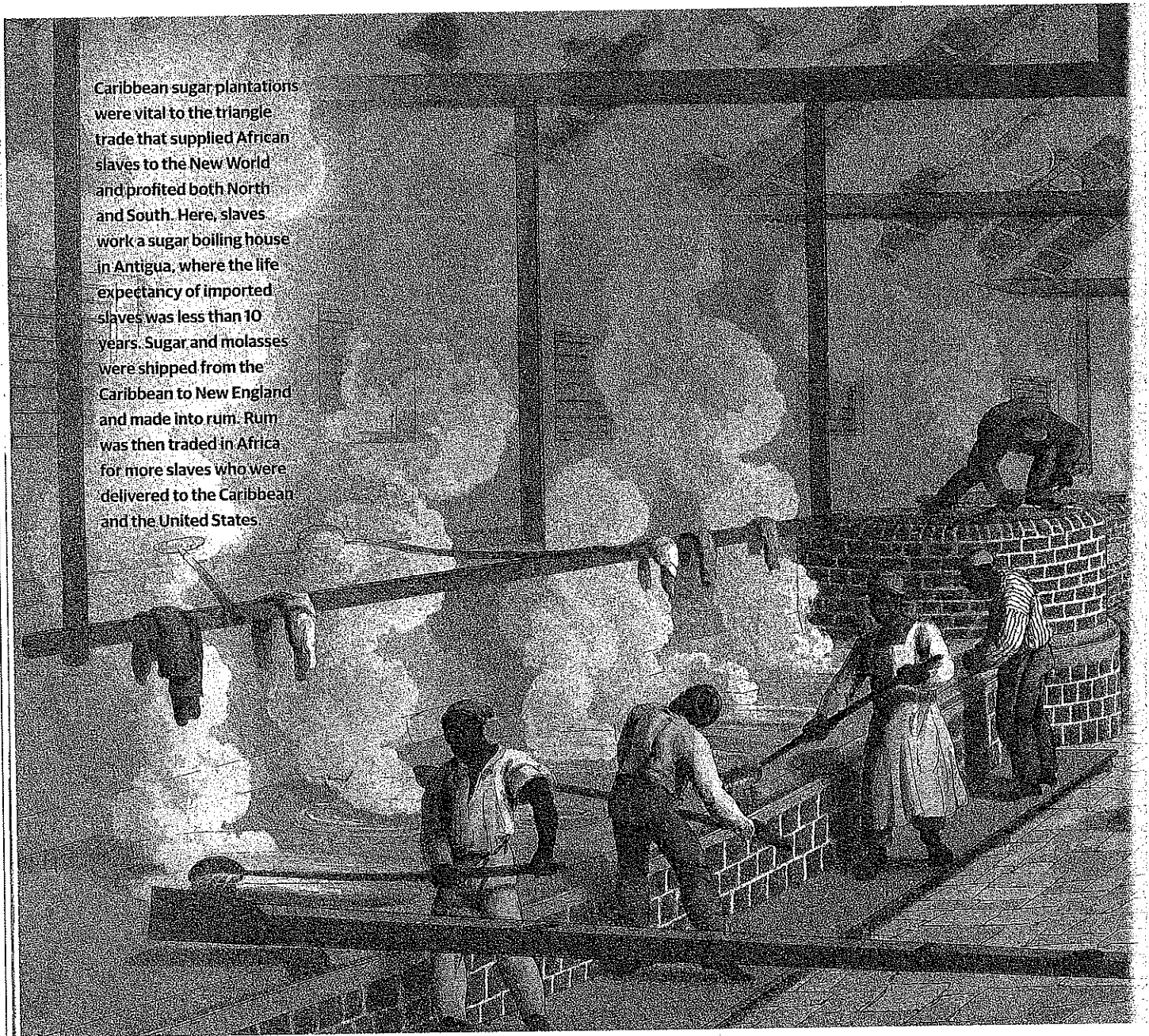


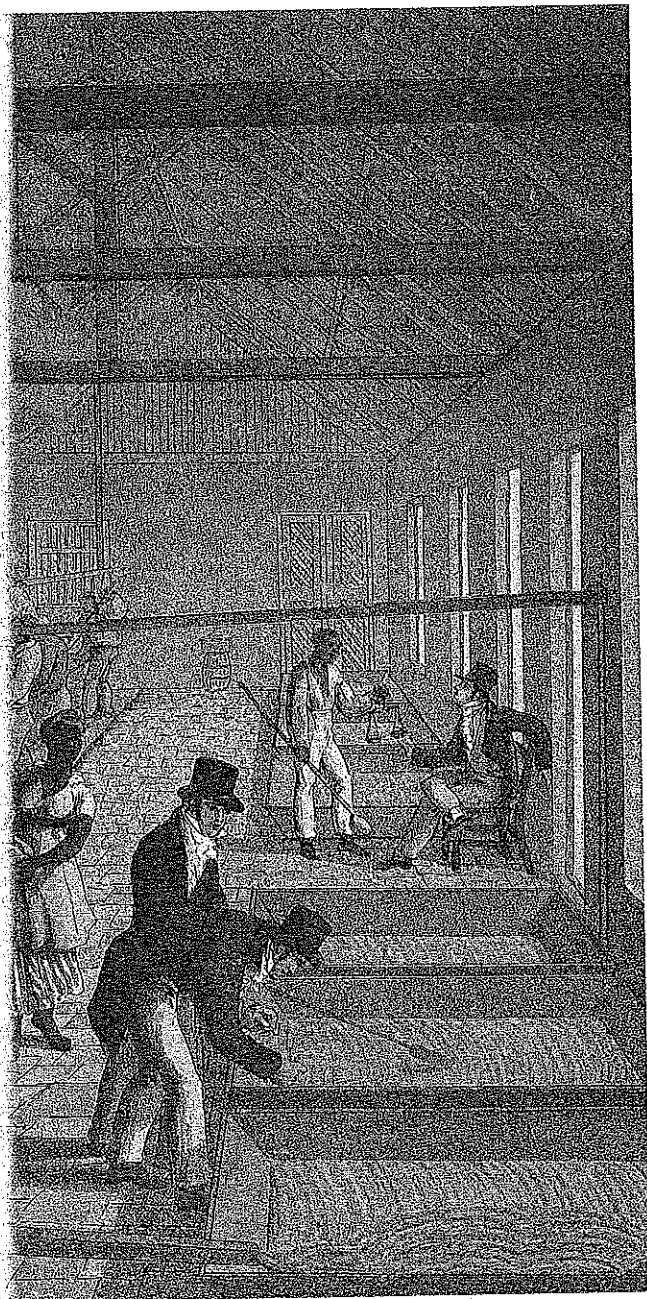
Let's Make a Deal

by Ray Raphael

Caribbean sugar plantations were vital to the triangle trade that supplied African slaves to the New World and profited both North and South. Here, slaves work a sugar boiling house in Antigua, where the life expectancy of imported slaves was less than 10 years. Sugar and molasses were shipped from the Caribbean to New England and made into rum. Rum was then traded in Africa for more slaves who were delivered to the Caribbean and the United States.

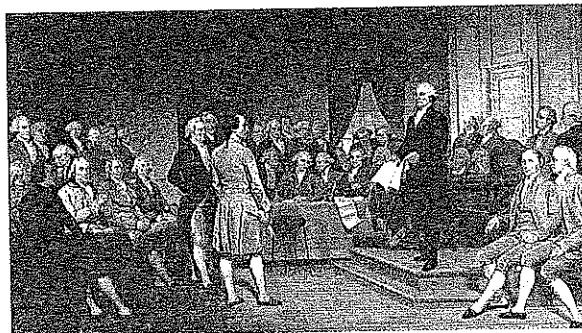


There would have been no Constitution without compromise, but politics trumped principles in surprising—and unsettling—ways when it came to slavery



he framers of the Constitution knew better than to use the word “slave” or “slavery” in their blueprint for republican government.

What an embarrassment that would be for a nation founded on the principle of freedom. But slavery figured into two particularly contentious issues taken up by the Constitutional Convention of 1787: how to apportion congressional representation and how to regulate commerce. While each delegate to the convention had the good of the nation in mind, each also represented the interests of his own state and region, and interest-driven haggling often interrupted more high-minded debate. They argued, cajoled and bluffed, just as politicians do now, and in the end no delegate received all of what he wanted.



The Constitutional Convention at the Pennsylvania State House, where the Declaration of Independence was signed in 1776.

Even though most of these statesmen, including many from the South, regarded slavery as reprehensible, the institution had to be sanctioned somehow or else Southern economies, which depended on slave labor, would be threatened. Pierce Butler of South Carolina flatly stated his region's greatest concern: "The security the Southern States want is that their negroes may not be taken from them." Without some guarantee from the North, Southern delegates would likely bolt the convention, and the Constitution would die aborning.

An early knockdown, drag-out fight over whether the states would have equal or proportional representation in Congress ended in the so-called Great Compromise. Each state would have two representatives in the Senate; the number of representatives in the House would be determined by a state's population. But there was a hitch: Should slaves be counted when figuring out the apportionment of representatives amongst the various states?

Of course! said Southern delegates. A slave's labor, just like that of a free person, contributes to national wealth and strength.

Three-Fifths Compromise

- All free persons
- + those bonded for service
- Indians not taxed
- + 3/5 all other persons

= People counted for apportionment of representatives and distribution of taxes



No way! replied Northern delegates. Only citizens should have a voice in the government. Counting slaves would grant enormous powers to Southern slaveholders, who would in essence cast votes on behalf of the people they held in bondage.

Since neither side would concede, delegates came to a work-

able but not very rational compromise: In calculating how many representatives could go to Congress, each state would include its "whole Number of free Persons," exclude "Indians not taxed" and then add "three fifths of all other Persons," the chosen euphemism for enslaved human beings. Those are the words of our original Constitution, before it was altered by the 13th and 14th amendments.

But how in the world did they come up with three-fifths?

For that we need to go back to 1783, four years before the convention, when Congress faced an inversely related problem. At that time, while trying to make the Articles of Confederation more workable, Congress wanted to find a formula for how much money each state needed to contribute to the common treasury. Should slaves be counted in that calculation?

Of course not! Southerners exclaimed. If we count slaves, who are property, why not count horses in the North? Besides, slaves are not as productive as free people.

By all means! Northerners responded. Slave labor is productive, so any measure of property must reflect that.

To keep the embryonic nation together, congressional delegates tried to fashion a compromise. Southerners offered to count one-half (50 percent) of the enslaved population, but Northerners insisted on two-thirds (67 percent).

Perpetuating the 'Peculiar Institution'

JUST OVER HALF of the 55 delegates to the Constitutional Convention owned slaves. They can be broken into four groups.



George Mason

Men from the South who owned plantations worked by men and women held in bondage: Daniel Carroll, Daniel of St. Thomas Jenifer, John Francis Mercer (Maryland); George Mason, George Washington, Edmund Randolph, John Blair, James Madison (Virginia); Richard

Dobbs Spaight, William Blount, William Richardson Davie, Alexander Martin (North Carolina); Charles Pinckney, Charles Cotesworth Pinckney, John Rutledge, Pierce Butler (South Carolina); William Houston (Georgia). Richard Bassett and John Dickinson (Delaware), each of whom owned plantations in both Maryland and Delaware, can be included in this group.

Men from the South who owned slaves but were not dependent on an enslaved work force: Luther Martin (Maryland); George Wythe (Virginia); William Few (Georgia).



William Livingston

Men from the North who owned, or had owned, slaves for "convenience," mostly as household servants: William Livingston (New Jersey); Thomas Fitzsimons, Benjamin Franklin (Pennsylvania); George Read (Delaware); William Samuel Johnson (Connecticut).



Robert Morris

Man in the middle: Robert Morris (Pennsylvania) did not own slaves himself, but before the Revolution, he'd imported and sold them through his shipping business and invested in a Mississippi River orange plantation worked by 100 enslaved people.

After considerable haggling, Congress split the difference: three-fifths (60 percent). Although this compromise passed Congress by a substantial majority, it failed to receive unanimous approval from the separate state legislatures, as required for any amendment to the Articles of Confederation.

In 1787, once again at an impasse, the framers of our Constitution simply dusted off the three-fifths fraction, even though the argument had turned into its mirror opposite. When counting slaves added an extra burden to the South's financial obligations, the North said count them, while the South said not to. But when slaves turned from a liability to an asset for purposes of representation, the South said count them, while the North said not to. Both sides reversed their positions. Logic? Morality? Not exactly. Delegates did whatever had to be done to move the show along. They wanted a new Constitution for the entire nation, and haggle as they might, they would do most anything to get it.

On August 6, after the convention had debated various issues for more than two months, a five-man Committee of Detail fleshed out a rough draft of what would become the Constitution. In that draft, to reassure the Southern states, the committee stipulated that Congress would not be allowed to tax or prohibit "the migration or importation of such persons as the several States shall think proper to admit."

Two weeks later, when that provision came up for debate, Maryland's Luther Martin, a slaveowner himself, moved immediately to strike it out. Since each imported slave would add to a state's representation, states would be rewarded politically for engaging in the slave trade. "It was inconsistent with the principles of the revolution and dishonorable to the American character to have such a feature in the Constitution," he argued.

Virginia's George Mason, also a large slaveowner (his plantation was very close to Washington's Mount Vernon), supported Martin's motion for both practical and moral reasons. Slavery impeded "the immigration of Whites, who really enrich & strengthen a Country," while it also produced "the most pernicious effect on manners." In words that are now often quoted, Mason boldly pronounced: "Every master of slaves is born a petty tyrant. They bring the judgment of heaven on a Country. As nations can not be rewarded or punished in the next world they must be in this."

Did these slaveholders seriously oppose the very institution that supported them? Not entirely. Neither Martin nor Mason had any problem counting enslaved people, or at least some fraction thereof, to boost the representation of their respective states. But the issue this time was the *importation* of slaves—and both Maryland and Virginia already had as many as they needed.

The profitability of rice plantations in South Carolina, on the other hand, depended on more slave labor than was

Stemming Slavery's Tide

BENJAMIN FRANKLIN, in 1787, helped revitalize the Pennsylvania Society for Promoting the Abolition of Slavery.



Benjamin Franklin

Slaves needed not only to be freed, Franklin believed, but also educated, trained and employed. In this context, he promoted the cause of free blacks as well as slaves. Earlier in his life, Franklin had owned at least five slaves, but by the time of the Constitutional Convention, they had run away, died or been freed.

Alexander Hamilton was an active member of the New York Manumission Society, begun in 1785 by John Jay, an important founder who did not attend the Constitutional Convention. William Livingston, governor of New Jersey and delegate to the convention, supported this organization.

Luther Martin, who owned six household slaves at the time of the convention, helped found the Maryland Society for Promoting the Abolition of Slavery and the Relief of Free Negroes and Others unlawfully held in Bondage two years later. Because he still held people in bondage, however, Martin was only an "honorary-counsellor," not a full member.

Rufus King of Massachusetts authored the provision in the 1787 Northwest Ordinance that outlawed slavery in the western territories north of the Ohio River.

Livingston, John Dickinson and Richard Bassett manumitted some or all of their slaves during their lifetimes.

George Washington and George Wythe manumitted their slaves in their wills.

Gouverneur Morris, a New York aristocrat representing Pennsylvania, launched an unequivocal assault on slavery at the convention, assailing all compromises. Slavery was "a nefarious institution" and "the curse of heaven," he said.



The seal of Pennsylvania's Abolition Society, circa 1800.

“Religion & humanity had nothing to do with this question—interest alone is the governing principle with nations”

—John Rutledge, South Carolina

currently available, so delegates from that state wanted to keep importation open. Charles Cotesworth Pinckney, a South Carolina patrician, called out Mason for his high-toned stance, alleging baser motives: “As to Virginia she will gain by stopping the importations. Her slaves will rise in value, & she has more than she wants.” This surplus of slaves would allow Virginians to establish “a monopoly in their favor,” setting “their own terms for such as they might sell.” Mason’s moralizing merely protected Virginia’s local industry—breeding slaves for the market—which foreign imports would impair.

Other delegates from South Carolina and neighboring Georgia chimed in to defend the “right” to own slaves.

Charles Pinckney (Charles Cotesworth Pinckney’s cousin) argued from history: “If slavery be wrong, it is justified by the example of all the world.” He “cited the case

of Greece Rome & other antient States; the sanction given by France England, Holland & other modern States. In all ages one half of mankind have been slaves.”

Georgia’s Abraham Baldwin (a transplanted son of Connecticut) offered an argument that defenders of slavery would repeat many times before the Civil War: Slavery was “a local matter,” not a “national object,” and Georgia would refuse to accept any attempt “to abridge one of her favorite prerogatives.” Charles Pinckney offered a similar threat: “South Carolina can never receive the plan [the Constitution] if it prohibits the slave trade.” There must be no “meddling with the importation of negroes.”

South Carolina’s John Rutledge was particularly blunt: “Religion & humanity had nothing to do with this question—interest alone is the governing principle with nations.” It was perhaps the brashest, and most honest, statement of the summer.

e might think that New England delegates, who opposed slavery, would fight to ban slave importation, but they did not. “Let us not intermeddle” in the dispute between the Upper and Lower

South, said Connecticut’s Oliver Ellsworth. “The morality or wisdom of slavery are considerations belonging to the States themselves.” Further, because slaves “multiply so fast in Virginia & Maryland that it is cheaper to raise than import them, whilst in the sickly rice swamps foreign supplies are necessary,” it would “be unjust towards S. Carolina & Georgia” to limit their importation.

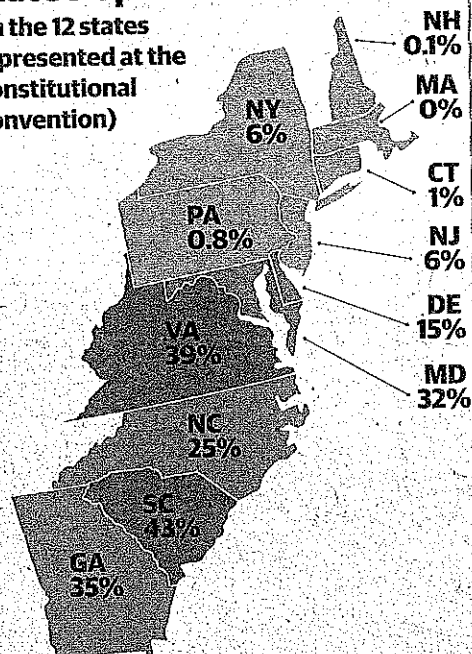
Why did New England delegates argue in favor of slave importation? Most directly, some New England ship owners and merchants took part in the foreign and interstate slave trade, and attempts to limit that enterprise would cut against the interests of these constituents. This was countered, though, by the antislavery views of other constituents.

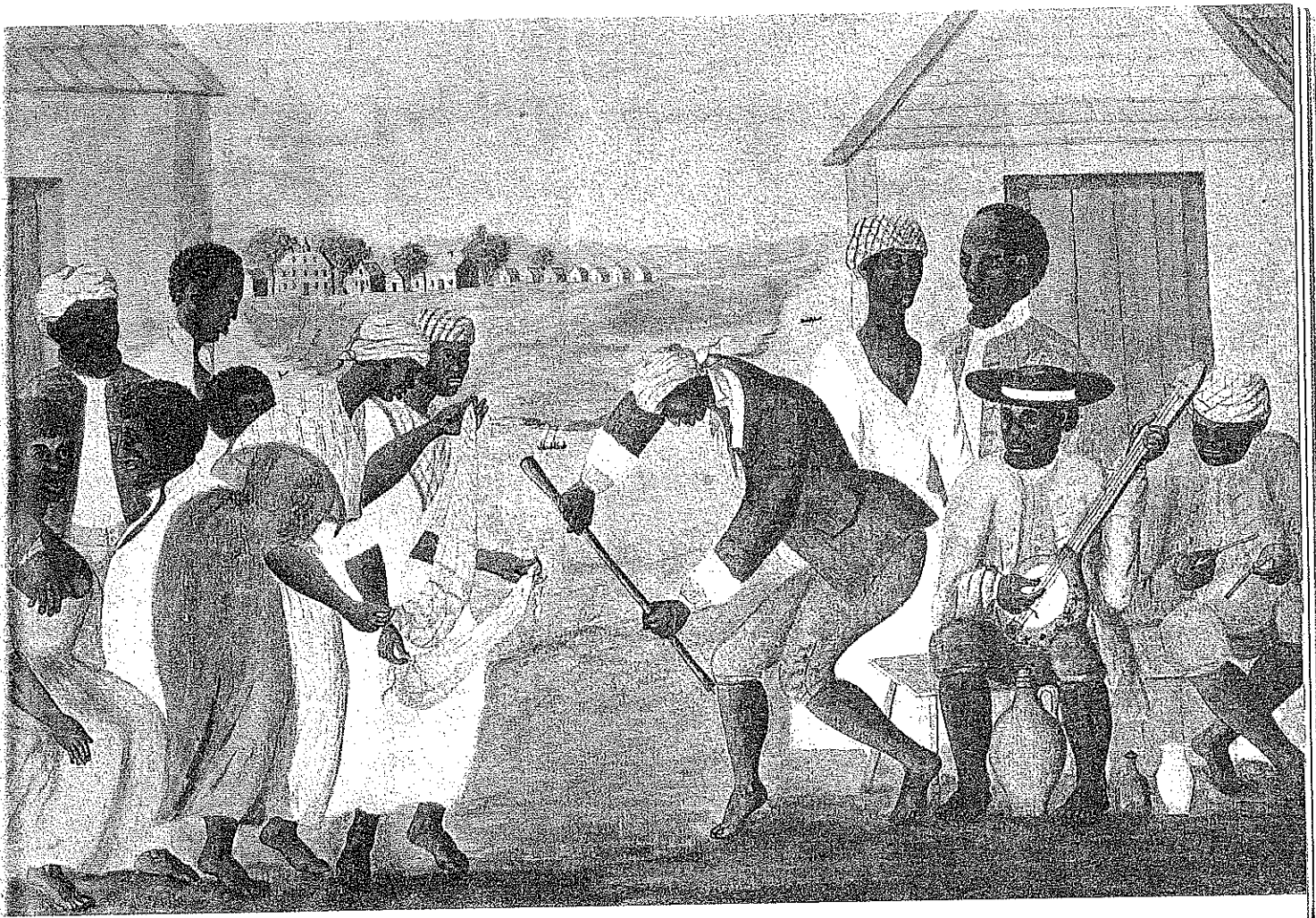
More complex political motives were also at play. Just as the South depended on slavery, New England could not survive without maritime commerce—but the Committee of Detail’s draft required that no navigation act could be passed without a two-thirds supermajority in both houses of Congress. Such a high hurdle bothered New Englanders, who worried that a minority of states could impede important commercial legislation, but it pleased Southerners because it prevented Northerners, who would enjoy a slight majority in Congress, from passing laws that hurt Southern interests.

With these various regional issues on the table, delegates from New England and delegates from the Deep South cut a deal. First, New Englanders agreed that Congress could not prohibit slave importation until the year 1800, nor could it levy import duties on slaves “exceeding the average” of other duties. In return, delegates from the Deep South agreed to drop the requirement for a congressional

Slaves as Percentage of State Population in 1790

(in the 12 states represented at the Constitutional Convention)





African music and dance are captured in an 18th-century watercolor recently identified as having been painted by South Carolina slaveholder John Rose. Two women appear to be playing Sierra Leonean rattles made of gourds and shells woven into cloth. The banjo is also of African origin.

supermajority in commercial regulation. Further, the contingent from the Deep South demanded and received two other concessions: an extension of the allowance for slave importation until 1808 and a fugitive slave clause that in the 19th century would give rise to poisonous controversy: "If any person bound to service or labor in any of the U. States shall escape into another State, he...shall be delivered up to the person justly claiming their service or labor."

Virginia and Maryland were left out of this deal: They had opposed both slave importation and making commercial regulations easier, but they lost out on both counts. When they refused to sign the Constitution, George Mason and Edmund Randolph (also of Virginia) complained bitterly about making navigation laws easier. Luther Martin (of Maryland) simply left the convention.

All these issues were decided on the basis of interests, not philosophy. Although delegates had brought abstract notions of sovereignty to bear on the interest-driven battles leading to the Great Compromise on representation, political motivations in the multifaceted compromises over slavery were more difficult to disguise. In the thick of the debate over slave importation, Rufus King of Massachusetts commented, "the subject should be considered in a

political light only," and that is exactly the way delegates to the Constitutional Convention dispatched the embarrassing matter of slavery.

Philosophical talk of liberty and human rights gave way in the end to legislative deal-making. When Gouverneur Morris of Pennsylvania, who favored abolition, said he "would sooner submit himself to a tax for paying for all the negroes in the U. States, than saddle posterity with such a Constitution," the other delegates simply ignored him. There would be no emancipation in the United States Constitution—not just yet. It would take a war, and more constitutional haggling, to do that.

In the end, even Morris accepted the imperfectly constructed document that bound the United States together. "Considering the present plan as the best that was to be attained," he would "take it with all its faults." Bigger issues, Morris reasoned, were at stake: "The moment this plan goes forth all other considerations will be laid aside, and the great question will be, shall there be a national government, or not?"

Ray Raphael's most recent book is Constitutional Myths: What We Get Wrong and How to Get It Right.