A PROFITABLE TOOL:

The Act of 1807's Failure at Ending the Slave Trade in Antebellum America

For hundreds of years the transatlantic slave trade flourished, carrying millions of Africans away from their homes to be sold into bondage in the Americas. Like many who saw the trade as inhumane, Thomas Jefferson advocated for its abolition in the United States of America, calling it a violation of "human rights, which ha[s] been so long continued on the unoffending inhabitants of Africa."[1] With the passage of the Act Prohibiting the Importation of Slaves of 1807 it appeared that Jefferson and Congress sought to completely end the involvement of Americans in the international slave trade. To the trepidation of slaveholders, outlawing the slave trade also appeared to be a step toward total abolition. Much like Jefferson, many Americans recognized the incongruity between the liberal principles the nation was founded on and the slave trade, but the legitimacy of slavery consistently undermined enforcement of the Act of 1807. By the 1800s, the institution of slavery had become so embedded in American life that preventing participation in the international slave trade became nearly impossible, and contrary to the national narrative, American involvement in the slave trade was decidedly a national condition rather than an exclusively Southern transgression. Between the years of 1807 and 1820, the Act Prohibiting the Importation of Slaves was ineffective at punishing slave traders and liberating African victims, and still less effective at preventing those kidnapped from being sold into slavery. Rather, the act became a tool by which both states and informers could profit from the capture of slave vessels, while Africans continued to be sold into bondage in the United States.

Though the Act of 1807 had many issues between 1808 and 1820, the inability of the United States government to enforce the slave trade ban was foreshadowed by the lack of success of Congress's early attempts to regulate the trade. Despite Article 1 Section 9, which prevented Congress from outlawing the slave trade until 1808, the Constitution did not prevent Congress from regulating the trade, and in 1794 it passed a law that prohibited Americans from building, equipping, or fitting out a ship to participate in the African slave trade. The act also had a provision that prevented ships, domestic or foreign, from sailing from American ports to participate in the trade. A violation of these laws could result in fines up to $2,000 for outfitting a ship and $200 for sailors found aboard slaving vessels.[2] Interestingly, in 1795 the first person prosecuted under the new law did not come from the South, but from Rhode Island. John Brown of Providence, Rhode Island, the same John Brown who in 1772 had led a group of Rhode Islanders in burning the *Gaspee,* was indicted under the 1794 Act and forced to forfeit his ship *Hope*. Brown eventually won his appeal in 1797, indicating that enforcement of slave trade laws would be inconsistent due to disagreement among juries on whether slave trading was truly a crime.[3] Brown's case also demonstrated the fact that in the few cases where slave traders were actually brought to court, they usually managed to escape

1 Thomas Jefferson: "Sixth Annual Message," December 2, 1806. Online by Gerhard Peters and John T. Woolley, *The American Presidency Project*. http://www.presidency.ucsb.edu/ws/?pid=29448.

2 *An Act to Prohibit the Carrying on the Slave Trade from the United States to any Foreign Place or Country*, U.S. Statutes at Large 3rd Congress 1st session (1794): 347-349.

3 Jay Coughtry, "Papers of the American Slave Trade," *University Publications of America*, 1996. http://www.lexisnexis.com/documents/academic/upa_cis/1404_PapAmSlaveTrSerAPt1.pdf

severe punishment.

In 1800, Congress attempted to address some of the issues that plagued the Act of 1794 by passing an amendment that incentivized the policing of American coasts by private parties and intensified the penalties associated with violations of the law. The amendment stipulated that any citizen who financed a slave vessel would pay a fine equal to double the amount the violator had originally invested.[4] Not only could Americans be charged for financing a slave voyage, but Congress also prohibited American sailors from serving aboard foreign ships involved in the trade. One of the most important provisions of the law, however, allowed commissioned vessels to seize American slaving ships engaged in the trade. Any captured ships were to be condemned and sold by the federal government, while the crew that captured a ship was entitled to receive half of the value of the ship and its cargo after the sale, with the other half going to the prosecuting state.[5] Although Congress would eventually adopt this same measure in the Act of 1807, the mobilization of the private sector against the slave trade was far less effective than lawmakers foresaw.

During the Ninth Congress, held from March 4, 1805 to March 4, 1807, a significant amount of debates in the House of Representatives centered on the question of the importation of slaves and highlighted the conflicting opinions that would plague the enforcement of the Act of 1807. Regarding a tax of ten dollars per slave that was proposed by James Sloan of New Jersey, Peter Early, a representative from Georgia, asserted that the goal of the tax is "to either point the disapprobation of this nation at the practice in question, or to raise a revenue from that practice."[6] Early argued that if the policy was aimed at South Carolina, Congress was attempting to "irritate and wound the feelings of a respectable member of the confederacy," and if it was to raise revenue, only an insignificant sum would be raised in respect to the revenue of the country.[7] Southern delegates like Early contended that the revenue raised by a tariff on imported slaves would be insignificant for the federal government, meaning that the proposed bill had to be an attack on the slave system by Northern aggressors. In reply to Early, J.C. Smith of Connecticut interjected that unlike Georgia, his state did not have a feature that prohibited the slave trade because Connecticut "never received into her bosom any of the species of property alluded to."[8] Smith's response only fueled Southern outrage, drawing well-founded objections that the moral New Englanders Smith spoke of were themselves major participants in the international slave trade.

The primary points of debate regarding the Act to Prohibit the Importation of Slaves of 1807 were whether the proposed solutions would be effective at stopping the trade, and what the captives' fates would be when slavers inevitably smuggled in slaves. As Timothy Pitkin of Connecticut pointed out, the self-defeating nature of the proposed bill meant it was doomed to fail in preventing the enslavement of Africans. However, Pitkin condemned the solution of government sale of smuggled slaves at auction, saying "what… shall we declare… that these unfortunate blacks brought into this country, not only against their will, but against the express provisions of the law itself, shall be sold as slaves for the benefit

4 "The Avalon Project : Statutes of the United States Concerning Slavery," *yale.edu,* Retrieved 15 March, 2018.

5 *An Act in Addition to the Act Intituled [sic] "An Act to Prohibit the Carrying on the Slave Trade from the United States to any Foreign Place or Country*," U.S. Statutes at large 6th Congress, (1800).

6 Thomas Hart Benton, *Abridgement of the Debates of Congress, from 1789 to 1856* (New York: D. Appleton & Co. 1857), 389, https://books.google.com/books?id=yVsLAQAAIAAJ&printsec=frontcover&vq=slave+trade&source=gbs_ge_summary_r&cad=0#v=onepage&q=slave%20trade&f=false

7 Ibid, 390.

8 Benton, *Abridgement of the Debates of Congress, from 1789 to 1856*, 391.

of the United States and the price of their slavery be lodged in the public coffers?"[9] Pitkin, like many others in Congress, saw the hypocrisy in condoning the sale of illegally imported slaves, but would not support the manumission of these captives if it meant the existence of free blacks in the states.

The existence of a significant number of free blacks was objectionable to most Southerners, which caused them to oppose the manumission of illegally introduced slaves. Even Southern opponents of slavery and the slave trade harbored disdain for free blacks, especially Thomas Jefferson. In reply to Edward Coles's request for help to end slavery in Virginia in 1814, Jefferson called free blacks "pests in society by their idleness," and "as incapable as children of taking care of themselves."[10] Because he regarded blacks as inferior, he adamantly opposed the presence of freed slaves. Disdain and anxiety over free blacks was not exclusive to Southerners, however. After arguing that allowing states to benefit from the sale of smuggled slaves was a contradiction to the purpose of the ban, Timothy Pitkin stated that unless free blacks were taken care of, "the property, and perhaps the lives of those who live in states where slavery is permitted, would be insecure."[11] Pitkin's statement invoked the South's continuous fear of a slave rebellion.

Nevertheless, the agreement of Northerners like Pitkin with Southern fears of freed slaves did not preclude ongoing disagreement between legislators of the two regions over the slave trade. Three months before the Ninth Congress passed the Act to Prohibit the Importation of Slaves, Barnabas Bidwell of Massachusetts refuted the Southern qualms that allowing free blacks to live in their states would "be a destructive nuisance to the people of those states."[12] Bidwell claimed that "forfeiture of the Africans" was the only "adequate means of prevent[ing]" the continuation of the slave trade. [13] Arguments between Northern and Southern legislators illustrated the conflicted American perception of slavery as a moral institution. Like a majority of legislation regarding slavery, the ban on importing slaves would only be solved by compromise.

After legislators presented their arguments for how to solve the problem of smuggled slaves and free blacks, the bill was sent to a committee of seven legislators, which consisted of five Southerners and two Northerners. A popular solution was President Jefferson's proposed plan of gradual emancipation and expatriation of slaves. He called it the most "expedient" plan for abolishing slavery.[14] Jefferson's deep aversion to spending federal money, however, prevented him and others from implementing the plan. Other Southerners capitalized on the indecision and succeeded in installing their solution of relinquishing the decision to the states, with the official bill designating that illegally imported slaves were to be forfeited to the governor or chief magistrate of the state where the ship and slaves were seized. Several other provisions of the law stated that those who informed officials about slave trading vessels were to receive half the proceeds of the sale of the ship and its human cargo.[15] The privateers or naval crews who captured slaving vessels were also entitled to receive a share of the profit from the sale. These provisions were intended to encourage diligent policing of American waters and mobilize the American people against the slave trade at a time when the U.S.

9 Ibid, 496.

10 "Thomas Jefferson to Edward Coles, 25 August 1814," *Founders Online,* National Archives, last modified February 1, 2018.

11 Benton, *Abridgement of the Debates of Congress*, *from 1789 to 1856,* 496.

12 Ibid, 495.

13 Ibid, 496.

14 "Thomas Jefferson to Edward Coles, 25 August 1814," *Founders Online*.

15 *An act to prohibit the importation of slaves into any port or place within the jurisdiction of the United States, from and after the first day of January, in the year of our Lord, one thousand eight hundred and eight*

Navy was not large enough to patrol the East Coast, but many abused or exploited the law for personal gain. In essence, the law did not seek to liberate captured Africans because, as the debates in the Ninth Congress showed, most Americans objected to having a substantial number of free blacks living among them. Additionally, the impracticality and financial costs associated with colonizing freed blacks posed significant difficulties and convinced proponents of the ban that sending Africans back to Africa was not a feasible solution.

Another point of contention in the debates prior to the Act of 1807's passage was the severity in punishment offenders would receive. A portion of the delegates, both Southerners and Northerners, contended that the crime of slave smuggling should be a capital offense. Proponents of the death penalty believed that the severity of the punishment would deter slave traders from importing slaves, thus preventing the slave trade altogether and solving the problem of what to do with smuggled slaves by eliminating the source of the issue. Opposition to this, however, came from Southerners who expressed the disapproval their constituents would have for such a policy. Georgian Peter Early predicted that a vast majority of his Southern countrymen were accustomed to the international slave trade and "considered it not as an aggravated crime, and a large portion of them as no crime at all."[16] Early argued that making the law a capital offense would mean that violators would escape prosecution because many Southerners did not view the trade as a crime and would not pursue any convictions that resulted in execution. As a result of Early's insistence and support from other legislators, the finalized version of the bill levied a hefty financial penalty against violators in hopes that this would encourage courts to prosecute offenders.

In its final form, the Act of 1807 combined the provisions of previous slave trade legislation with that of the results of Congressional debates to produce a law that appeared to be a crippling blow to the slave trade in the United States. On March 2, 1807 President Jefferson signed the Act Prohibiting the Importation of Slaves into law. Section 1 of the act made it unlawful for any person to "import or bring into the United States or the territories thereof from any foreign kingdom, place, or country, any negro, mulatto, or person of color, with intent to hold, sell, or dispose of such negro, mulatto, or person of color, as a slave, or to be held to service or labor."[17] American citizens who built or equipped a ship for the purpose of trading slaves could receive a substantial fine of $20,000. Those who participated in the slave trade were subject to a fine between $1,000 and $10,000, and five to ten years in prison. Purchasers of illegally imported slaves also faced a fine of $800 per slave. Section 7 authorized the Navy to seize any ship with Africans on board in American ports, on American rivers, or hovering around American coasts.[18] The ship, its cargo, and its furnishings were then all subject to be forfeited to the United States government. The captain of the seized ship also faced a $10,000 fine and two to four years in prison.

Implementing the consequences for violators established by the 1807 law proved difficult. The possible prison time and fines made it clear that Congress sought to completely eliminate the trade in the United States, and the act seemed to be a precursor to the eventual abolition of slavery altogether. However, after the law went into effect in 1808 it became clear that the judiciary and the people had little intention of pursuing an end to the slave trade. The first glaring discrepancy that emerged between Congress's aims and localized inaction of the Act of 1807 surrounded the issue of what to do with smuggled slaves. States

16 Benton, *Abridgement of the Debates of Congress,* 502.

17 *An act to prohibit the importation of slaves into any port or place within the jurisdiction of the United States, from and after the first day of January, in the year of our Lord, one thousand eight hundred and eight ... March 2, . Approved*, Washington, 1810, Retrieved from the Library of Congress.

18 *An act to prohibit the importation of slaves into any port or place within the jurisdiction of the United States*, Section 7.

where the ships were taken or captured would gain the power to decide the Africans' fates, which implied that most would either be auctioned off or returned to their original owners because of an aversion to free blacks among Americans and a reluctance to use limited state budgets to export Africans. Either way, the Africans would still end up as slaves and the system of slavery would remain intact.

For members of the public who desired to put an end to the slave trade, amongst them newspaper editors and members of religious groups, the contradiction between the purpose of the 1807 law and its provisions did not escape notice. Editors of the *National Intelligencer*, based in Washington D.C., pointed out the continuance of the trade in a January 1807 publication:

> For, in point of legal or moral principle, it made no difference, whether the crew of an American slave ship, upon their arrival on the coast of Africa, go ashore them selves, or by suprize [sic] or force take possession of their prisoners… The crime is the same, and the injury the same to the sufferers. In either case they are, without their consent, and against their will, by force and arms, torn from their homes, from their families, their parents, their children, their husbands and wives, their brothers, friends and acquaintance, from all those tender relations, which they, as well as we, have hearts to feel.[19]

While some Americans, especially those in the South, had grown accustomed to the realities of human bondage, some lamented its continuance. A group of Quakers in Philadelphia denounced the smuggling of slaves in an 1824 pamphlet, saying "[w]hen the atrocious character of the African slave trade… and the various laws enacted for its suppression… are considered, it may appear incredible that this traffic should still continue to disgrace the christian [sic] name… yet from various sources of authentic information, it is an unquestionable fact that [Africans] remain exposed to all the horrors inseparable from this iniquitous commerce."[20] The group also claimed that American slaving vessels were "often protected in this illicit traffic" by flying foreign flags, preventing American officials from searching the ships.[21] Further condemning the participants in the slave trade, the authors of the pamphlet presented numerous testimonies and eyewitness accounts describing crimes committed by slave smugglers and calling them "the vilest and most depraved class of human beings."[22] Simply commiserating with their African counterparts was not enough, however, as the authors stated "it now becomes us to enquire, what we can do to diminish the grievous load of suffering… and if we turn a deaf ear and refuse to hearken, we may implicate ourselves in the weight of guilt."[23]

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19 "Congress," *National Intelligencer and Washington Advertiser* [Washington, District Of Columbia] [Jan. 02, 1807]: n.p. *19th Century U.S. Newspapers*, http://find.galegroup.com.libproxy.unl.edu/ncnp/infomark.do?&source=gale&prodId=NCNP&userGroupName=linc74325&tabID=T003&docPage=article&searchType=AdvancedSearchForm&docId=GT3017445690&type=multipage&contentSet=LTO&version=1.0.

20 Philadelphia Yearly Meeting of the Religious Society of Friends, *A View on the Present State of the African Slave Trade* (Philadelphia: William Brown Printer 1824), 6. https://books.google.com/books?id=5xcfH7l8YXIC&source=gbs_navlinks_s

21 Philadelphia Yearly Meeting of the Religious Society of Friends, *A View on the Present State of the African Slave Trade*, 30.

22 Philadelphia Yearly Meeting of the Religious Society of Friends, *A View on the Present State of the African Slave Trade*, 60.

23 Philadelphia Yearly Meeting of the Religious Society of Friends, *A View on the Present State of the African Slave Trade*, 62-63.

In hopes of animating the public, several groups attempted to provide numerical evidence of the continuance of the slave trade after 1808, but the illegal nature of slave smuggling made it impossible to obtain accurate numbers. Editors of the *Staunton Eagle*, a Virginia based periodical, addressed their article to the "humane, the just, and the enlightened citizens of the United States," providing a report that detailed the number of "wretched beings, to be subjected to the lash of their cruel taskmasters" who were imported into Charleston between 1804 and 1807.[24] The *Staunton Eagle* gave estimates for Charleston's importation of slaves at 5,386 in 1804; 6,790 in 1805; 11,468 in 1806; and 15,576 in 1807 for a total of 39,220.[25] Despite the difficulties associated with calculating an accurate number, attempts to estimate the total number of illegally imported slaves have persisted. W.E.B. Du Bois agreed with contemporary estimates of 13,000-15,000 Africans imported annually between 1810 and 1820. [26] The most reliable modern assessments estimate, however, that around 840,000 Africans were transported to the Americas by all nations between 1808 and 1820, with Americans accounting for only about 10,000.[27] According to case files of the Federal District Courts, privateers alone delivered between 4,106 and 4,213 Africans from 1810 to 1821.[28] Other estimates range from as little as 1,000 to as much as 14,000 smuggled slaves per year. Considering Americans often used foreign flags to disguise their slaving vessels, the true number is likely on the higher end of the range.

From its inception, the Atlantic Slave Trade proved lucrative for both slave traders and plantation owners, which led Congress to attempt to utilize the private sector's desire for financial gain against the trade, though they did so at the expense of the captive Africans and to the continued benefit of slaveholders. As demonstrated by the provisions of the Act to Prohibit the Importation of Slaves of 1807, Congress attempted to incentivize the policing of the slave trade and enlist the aid of diligent citizens who might otherwise be hesitant to testify. Congress added terms to the Act that entitled witnesses to a share of the proceeds from a public auction of illegally imported slaves. Upon a slaving vessel's capture, criminal indictments usually followed, but a vast majority of the time the suspect was eventually acquitted of the charges and allowed to go free. Civil cases were then filed to decide the fate of the ship and its cargo. Frequently, the privateers or crew who captured the slaving vessel would initiate claims of "salvage," which under United States admiralty law is defined as "compensation to be made to persons by whose assistance a ship or its lading has been saved from impending peril… It is of two kinds; military salvage consisting of recapture or rescue of a ship from an enemy; and civil salvage, consisting of saving in cases of property derelict."[29] The district attorney filed a suit, or a "libel" in admiralty terms, with the District Court that held admiralty jurisdiction over the port or area where the slave ship was captured. If successful, the ship's title would be transferred to the United States, and the ship and its cargo would be sold. Any smuggled Africans on board were turned over to government officials, often the governor of the state in which the case originated, and sold at public auction. In this way,

24 "The Slave Trade," *Scioto Gazette* [Chillicothe, Ohio] 23 May 1808: n.p. *19th Century U.S. Newspapers*, http://find.galegroup.com.libproxy.unl.edu/ncnp/infomark.do?&source=gale&prodId=NCNP&userGroupName=linc74325&tabID=T003&docPage=article&searchType=AdvancedSearchForm&docId=GT3004778532&type=multipage&contentSet=LTO&version=1.0.

25 "The Slave Trade," *Scioto Gazette*.

26 David Head, "Slave Smuggling by Foreign Privateers: The Illegal Slave Trade and Geopolitics of the Early Republic," *Journal of the Early Republic 33,* no. 3 (2013): 438.

27 "The Trans-Atlantic Slave Trade Database, Slaving Voyages," *Trans-Atlantic Slave Trade*, Emory University (2013), slavevoyages.org/.

28 Head, "Slave Smuggling by Foreign Privateers: The Illegal Slave Trade and Geopolitics of the Early Republic," 439.

29 Erastus C. Benedict, *The American Admiralty: Its Jurisdiction and Practice with Practical Forms and Direction* (Albany: Banks, Gould & Co. Law Booksellers, 1850), 170.

slaveholders could gain a clean title to illegally imported slaves.
In cases where the captured vessel was owned by a foreign person or entity, the original owner usually initiated a suit that sought restoration of their property, with the outcome equally unfavorable to the captive slaves. These cases often ended in one of three ways: the original slave trader would win the suit and the slaves would be returned to them; the slave trader would win the suit and be awarded restitution because the slaves had already been sold; or the slave trader would lose and the Africans were sold by the government. In this regard the Act of 1807 was self-defeating in any moral justification for enforcing the law because an aversion to free blacks among Congressional delegates eliminated any provision that ensured freedom for smuggled slaves. The deficiencies in the act also demonstrated the success of southern legislators in keeping laws regulating slavery relatively weak.

Some resourceful American citizens found a variety of ways to exploit the provisions of the 1807 law, leading to sizable profits. Contributing to their ability to manipulate the legal system was the indifference public officials felt toward enforcing the law. The Laffites' slave smuggling operation in Louisiana was a perfect example of how profitable slave trading could be even after its abolition in 1807. The market value of slaves had steadily increased in Louisiana since 1804, as the ban on the trade had decreased the labor supply and the arrival of the cotton gin increased demand.[30] The two brothers, Jean and Pierre Laffite, took advantage of the rising demand among desperate Louisiana planters and ran a successful operation near New Orleans that connected slave-smuggling privateers to prospective buyers, which earned them nearly $50,000 off of smuggled slaves between 1809 and 1812.[31]
Prosecuting smugglers like the Laffites proved difficult for local officials because citizens viewed the smugglers as legitimate businessmen who were simply satisfying a public need. In a letter to Attorney General Richard Rush, Governor William C. C. Claiborne expressed his concerns in trying to prosecute the Laffites, as Louisianans felt "a sympathy for these offenders," and much was being done to "reconcile the Louisianians to the Government, laws, and usages of the United States," as Louisiana had become a part of the U.S. in 1803.[32] James Bowie, who would obtain legendary status with his death at the Alamo, also devised a lucrative operation with his brother and the Laffites. Bowie purchased slaves from the Laffites on Galveston Island and took them to Louisiana, where he would turn them over to authorities, claiming that he and his brother had "stumbled" upon them in the swamps and acted to enforce the law of the land by seizing them. Bowie was then entitled to half the proceeds from the sale of the slaves at auction, where he would purchase them himself for half the price and receive a legal title to them.[33] With a legal title, Bowie then sold the slaves for full market price. From 1819 to 1820, the Bowies succeeded four times in exploiting the law, selling 150 slaves and earning a sum of $65,000.[34] The Bowies and Laffites demonstrated that the inefficiencies of the Act to Prohibit the Importation of slaves were so conspicuous that they could be manipulated to bolster profits while consistently evading persecution.

Southerners were not the only Americans who profited by working around slave trade laws, as the DeWolfs of Bristol, Rhode Island became enormously wealthy from the trade. The slave trade had been a significant part of Rhode Island trade since its establishment as a colony, and merchants continued to commission slave vessels to Africa and the Caribbean

30 Head, "Slave Smuggling by Foreign Privateers: The Illegal Slave Trade and Geopolitics of the Early Republic," 446.

31 Head, "Slave Smuggling by Foreign Privateers: The Illegal Slave Trade and Geopolitics of the Early Republic," 446.

32 *Official Letter Books of W. C. C. Claiborne 1801-1816 Vol. VI*, ed. Dunbar Rowland, (Jackson: State Department of Archives and History, 1917), 302.

33 Head, "Slave Smuggling by Foreign Privateers: The Illegal Slave Trade and Geopolitics of the Early Republic," 453.

34 Head, "Slave Smuggling by Foreign Privateers: The Illegal Slave Trade and Geopolitics of the Early Republic," 453.

despite the passage of slave trade laws. The DeWolfs of Bristol were notorious for operating the most extensive slave trading business in the United States until 1825, shipping twice as many slave vessels as any other slave trader.[35] James DeWolf, a Revolutionary War veteran and U.S. senator from 1821 to 1825, was the most prominent of his family and amassed a significant fortune through his "ability to circumvent laws while maintaining his involvement in the transatlantic slave trade."[36] In order to maintain the family's power, DeWolf bullied his way out of lawsuits and succeeded in petitioning Thomas Jefferson to install his brother-in-law as the customs officer for Bristol, who held numerous financial interests in the slave trade and "never managed to see a slaver during the twenty years he held the office."[37] In 1799, DeWolf's ship *Lucy* was condemned as a slaving vessel and ordered to be auctioned off with profits going to the federal government. As Samuel Bosworth, the federal agent representing the U.S. Treasury, approached the auction to purchase *Lucy*, he was seized by eight men donning Indian disguises and paddled "north along the shoreline for approximately two miles."[38] DeWolf subsequently repurchased his vessel for "a paltry" $738.[39] Despite the Act of 1807, DeWolf continued his slave trading ventures by flying Spanish colors, falsifying cargo manifests, and relegating operations to his younger family members, who enjoyed less public scrutiny. The DeWolfs prove a particularly successful example of the Northern merchants who continued their business of human trafficking as if slave trade laws were nonexistent.

Compounding the issues of preventing the illegal importation of slaves was Congress's reliance on privateers, foreign and domestic, to act as a mercenary police force to patrol American coasts. Because Jefferson and his administration harbored profound aversions to a strong military and to government spending, the United States Navy lacked the funding to enforce the Act to Prohibit the Importation of Slaves of 1807. In Mobile, Alabama, one customs official lamented that a boat manned by five men was tasked with patrolling the waters between the Chandeleur Islands and the Perdido River, a distance of 100 miles.[40] With financial incentives driving them, privateers were responsible for a majority of the slave ships that were captured between 1808 and 1820. Additionally, the 1807 law allowed state governments and informants, as well as privateers to profit from the sale of slave ships and their captives, which meant stopping the slave trade became profitable for all parties except the original slave traders and their human cargo.

Though the Act of 1807 provided incentives for those who helped stop the slave trade, it did not discourage slave smugglers from moving slaves across American borders. With the demand for slaves in the South increasing thanks to the cotton gin, the flourishing African slave trade in the Caribbean afforded smugglers and slave traders ample opportunity to open a secondary trade with the United States by smuggling slaves in through Spanish Florida. After the slave revolt in Haiti, Cubans, who had specialized in growing tobacco prior to the uprising, seized the opportunity to take over the sugar trade. In order to do this, though, Cuba required a larger work force, which meant increasing the amount of slaves imported from

35 J. Stanley Lemons, "Rhode Island and the Slave Trade," *Rhode Island History* 60, no. 4 (2002): 100, http://www.rihs.org/assetts/files/publications/2002_Fall.pdf.

36 Cynthia Johnson, "James DeWolf: slaving practices, business enterprises, and politics, 1784-1816" (master's thesis, California State University San Marcos, 2010), 11, http://hdl.handle.net/10211.3/10211.8_467.

37 Lemons, "Rhode Island and the Slave Trade," 100.

38 Johnson, "James DeWolf: slaving practices, business enterprises, and politics, 1784-1816," 79.

39 Johnson, "James DeWolf: slaving practices, business enterprises, and politics, 1784-1816," 81.

40 Frances J. Stafford, "Illegal Importations: Enforcement of the Slave Trade Laws along the Florida Coast, 1810-1828," *The Florida Historical Quarterly* 46, no. 2 (1967): 131, https://www.jstor.org/stable/30147252.

Africa.[41] Many smugglers found success in landing their cargo on Spanish Florida's coast and moving the slaves across the border into American territory.[42] In 1817, the French privateer and former quasi-governor of Galveston Island, Louis-Michel Aury was responsible for making Amelia Island on the northern coast of Florida a base of operations for "assaults on Spanish shipping and a depot for contraband slaves," and residents claimed that Aury had succeeded in selling over 1,000 slaves into Georgia in a mere two months.[43] Aury's success demonstrated the inability of U.S. officials to effectively patrol an extensive coastline and signaled to others that smuggling slaves into the U.S. could be profitable.

Although the Act of 1807 punished ship owners, investors, and direct participants in the slave trade by separating them from their cargo and any potential revenue, it did nothing to remedy the situation of the victims. Usually the process of resolving legal claims to slave ships and their cargo was long and complicated. Meanwhile, the Africans were either sold by the state or awaited a verdict in penitentiaries. The vast majority of cases of seized slave ships were ruled to be justly condemned by state officials, while foreign and domestic participants in the trade rarely won their suits. Inconsistency among the different levels of the judiciary only added to the confusion.

One Supreme Court case in particular illustrated the inconsistent interpretations of the Act of 1807 by American courts. Spanish citizen and Cuban resident Juan Madrazo dispatched his schooner *Isabelita* to the coast of Africa in 1817 where it took on a cargo of Africans to be sold in Havana.[44] On *Isabelita*'s journey back to Havana, the privateer ship *Successor* captured *Isabelita* and carried it and the cargo of slaves to Amelia Island. It was under Aury's flag that the cruiser *Successor* operated, and in a "pretended court of admiralty" under his control, the crew of *Successor* was granted the rights to the *Isabelita* and the slaves aboard her as legal spoils of war.[45] As for the fate of Madrazo's ship, the captain of *Successor* "one Moore, an American citizen," commanded *Isabelita* and sailed it into the port of Georgetown, South Carolina, where it was seized by U.S. authorities and returned to Madrazo.[46] The slaves were sold to William Bowen, who moved them onto lands owned by the Creek Nation with the supposed intent of selling them in West Florida.[47]

Officials for the state of Georgia then seized the slaves in accordance with the Act to Prohibit the Importation of Slaves and delivered them to an agent for the governor of Georgia. The governor of Georgia, John Clark, ordered that some of the slaves be sold, and the proceeds be paid to the state's treasury, while the rest of the slaves remained in Clark's possession. The proceeds of the sale of half of the ninety slaves netted the state of Georgia $38,000, which was a significant sum in the early nineteenth century.[48] Clark subsequently filed an information, or an indictment presented by a public official, "praying that a portion of these Africans, which remained specifically in his hands, might be declared forfeit-

41 Kenneth F. Kiple, "The Case against a Nineteenth-Century Cuba-Florida Slave Trade," *The Florida Historical Quarterly* 49, no. 4 (1971): 347, http://www.jstor.org.libproxy.unl.edu/stable/30140625.

42 Stafford, "Illegal Importations: Enforcement of the Slave Trade Laws along the Florida Coast, 1810-1828," 125.

43 Lowe, "American Seizure of Amelia Island," 22.

44 "Statement by Gaspar Hernandes," Juan Madrazo v. Slaves and Cargo of the *Isabelita*, April 22, 1822, National Archives at Atlanta, https://catalog.archives.gov/id/16611866/4/public?contributionType=transcription

45 Richard Peters, *Reports of Cases Argued and Adjudged in the Supreme Court of the United States January Term 1828,* ed. Frederick Brightly (New York: The Banks Law Publishing Company, 1903), 85.

46 Peters, *Reports of Cases Argued and Adjudged in the Supreme Court of the United States January Term 1828*, 85.

47 Peters, *Reports of Cases Argued and Adjudged in the Supreme Court of the United States January Term 1828,* 86.

48 Peters, *Reports of Cases Argued and Adjudged in the Supreme Court of the United States January Term 1828*, 91.

ed."[49] William Bowen's claim to rightful ownership of the slaves in the District Court of Georgia was dismissed, and he appealed unsuccessfully to the Circuit Court, which eventually ruled in favor of Madrazo.

As original owner of *Isabelita*, Madrazo sued for restitution in the District Court of Georgia, claiming that the capture of his ship had been an act of piracy on the high seas, and his cargo condemned by a false court. The District Court dismissed Madrazo's claim, and Madrazo appealed to the Circuit Court. The Circuit Court ruled in favor of Madrazo and declared that he was entitled to the remaining slaves and restitution for the slaves that had already been sold. John Clark, persisting in his efforts, appealed the ruling on behalf of the state of Georgia to the Supreme Court. John Marshall delivered the Supreme Court's opinion, stating that the Act of 1807 "annuls the title of the importer, or any person claiming under him, to such negro, mulatto or person of color, and declares that such persons 'shall remain subject to any regulation, not contravening the provisions of this act, which the legislatures of the several states or territories, at any time hereafter, may make disposing of such negro, mulatto or person of color."[50] Essentially, Marshall's interpretation of the law meant that the Act of 1807 nullified any legal claim to the imported Africans that the original trader had and left the fate of the Africans in the hands of the state governors. In the final decision, the Supreme Court ruled that because of the Eleventh Amendment, which removed federal courts' jurisdiction in cases where a citizen files a suit directly against a state, the Circuit Court's ruling was nullified, as it did not have jurisdiction.

The dissenting opinion on the part of Supreme Court Justice William Johnson, a slaveholding South Carolinian, reveals intriguing information underlying the case that Marshall did not include in his opinion. Johnson, who had been one of the judges for the case in the Circuit Court, argued that Georgia had initiated the proceedings, thereby waiving any Eleventh Amendment claim. According to Johnson, Georgia had originally brought the claim on behalf of the American Colonization Society, but at some point between the decision in the Circuit Court and the hearing in the Supreme Court, it became "notorious" that Clark had returned the remaining slaves to Bowen.[51] Johnson said that by validating Georgia's Eleventh Amendment claim, Marshall was ensuring that the slaves would remain in Bowen's possession and that he would profit from them.[52] Restitution and the remainder of the slaves should have been returned to Madrazo, in Johnson's opinion. If what Johnson claimed was true, Georgia's officials had essentially seized the smuggled slaves, sold half of them for a profit, exploited the Eleventh Amendment to retain the legal title to the slaves, and then delivered those remaining back to Bowen. Despite the fact that Johnson himself was a slaveholder and never endorsed abolition, he often denounced the inhumane treatment of slaves and even ruled against an 1823 South Carolina act that required black sailors to be jailed.[53] Johnson's unpopularity with his fellow South Carolinians and his persistence in following the Constitution's text closely lend credibility to his claims that Southerners manipulated laws dealing with the slave trade for their own personal gain.

Johnson's argument finds additional support in the fact that Georgia was not alone in trying to work around the law. Legislators from New England had made the argument in the debates preceding the passage of the Act to Prohibit the Importation of Slaves that their

49 Peters, *Reports of Cases Argued and Adjudged in the Supreme Court of the United States January Term 1828*, 87.

50 Peters, *Reports of Cases Argued and Adjudged in the Supreme Court of the United States January Term 1828*, 90.

51 Ibid, 95.

52 Ibid.

53 Herbert A. Johnson, "The Constitutional Thought of William Johnson," *The South Carolina Historical Magazine* 89, no. 3 (1988): 136, http://www.jstor.org.libproxy.unl.edu/stable/27568040.

states were more aware of the immorality of slaveholding, but the investment and participation of their citizens in the slave trade refuted their claims that the trade was a question of Southern integrity. Much like in the case of *Isabelita*, the Brig *Columbia* and her cargo of eighty slaves was captured by privateers and brought to Georgia in 1808. Upon arrival, the ship and its cargo were ordered to be seized by the governor.[54] The *Columbia* was owned and commissioned by Nathaniel Wardswell of Rhode Island.

A decade of ineffectiveness induced Congress to make an amendment to the Act to Prohibit the Importation of Slaves of 1807. During the Fifteenth Congress, George Troup of Georgia adamantly argued against any approval of a motion to create a coalition between the United States and other European powers to stop the slave trade. Troup claimed that "no measure could be adopted more replete with danger to the welfare, to the very existence of this country," than to enter into an alliance with another country. [55] The representatives at the Fifteenth Congress were well aware that the prior refusal of legislators to form an international alliance, while in agreement with the popular policy of the time, doomed any legislation to fall short. As James Burrill pointed out, "it had been found impossible to put an entire stop to it without a cooperation among the nations prohibiting it; for, no matter how many nations prohibit the trade, if one or two are allowed to carry it on, the evil will still exist."[56] In agreement with Burrill, New York Senator Rufus King denied that the uneasiness others felt towards an alliance were well-founded. King believed that an agreement with foreign nations to combat the slave trade would in no way allow interference with the internal affairs of the United States.[57] Legislators debated over the means of fulfilling the obligations of the tenth article of the Treaty of Ghent, which created an agreement between the U.S. and Great Britain "to use their best endeavors to accomplish" a complete abolition of the slave trade.[58] Because the Constitution gave the power to initiate treaties or alliances with foreign nations to the Executive branch, the senators resolved that they could only create legislation that expedited the total abolition of the slave trade.

In 1820, Congress attempted to strengthen the Act of 1807 by amending an 1819 law with a clause that declared slave trading a capital offense. This law considered engaging in the slave trade to be piracy and extended to foreigners serving on American owned vessels.[59] Congress appeared to be taking its strongest stand against slavery in the approval of the 1820 amendment, and the potential death sentence was an intimidating deterrent for sailors considering work aboard a slaving vessel. While it most likely caused a decrease in American participation in the trade, the severe punishment still did not prevent some from smuggling slaves, and the punishment prescribed by law for violators was practically ignored.
One of the first cases tried under the 1820 amendment was that of the *Antelope*, which proved this law would be just as difficult to enforce as its predecessor. The case involved claims to the ship's cargo of slaves by multiple parties and demonstrated the limited options American judges had in developing a verdict. The Venezuelan commissioned ship *Arra-*

54 U.S. v. Brig *Columbia*, 1807-1808, Record Group 21, Records of District Courts of the United States 1685-2009, accessed online, https://catalog.archives.gov/id/7533348.

55 Thomas Hart Benton, *Abridgement of the Debates of Congress, From 1789 to 1856*, vol. 6, (New York: Appleton &Co., 1858), 11.

56 Benton, *Abridgement of the Debates of Congress, From 1789 to 1856*, 12.

57 Ibid.

58 Treaty of Ghent, U.S. and G.B., art. 10, Dec. 24, 1814, *OurDocuments.gov*, https://www.ourdocuments.gov/doc.php?flash=false&doc=20&page=transcript

59 *An act to continue in force "An act to protect the commerce of the United States, and punish the crime of piracy," and also to make further provisions for punishing the crime of piracy*, U.S. Statutes at Large 16th Congress, (1820).

ganta, which departed Baltimore in 1819, sailed to the African coast where she captured an American vessel from Rhode Island and took 25 of its slaves. *Arraganta* then took slaves from several Portuguese ships and captured the Spanish vessel *Antelope*, which the crew sailed to the coast of Brazil. On the return, *Arraganta* wrecked, forcing the crew to transfer to the *Antelope* under the command of American John Smith. The *Antelope* was captured in American waters in June of 1820 and taken to Savannah, Georgia. 280 slaves were found aboard the ship at the time of capture, all of which were immediately libeled by the Spanish and Portuguese, while Smith and the United States also claimed the slaves.[60] Chief Justice John Marshall, who condemned the slave trade as an "abhorrent" business, nonetheless delivered the court's opinion, which stated that in examining the claims "in which sacred rights of liberty and of property come in conflict with each other… this Court must not yield to feelings which might seduce it from the path of duty."[61] The Supreme Court dismissed Smith's claim, while upholding the rights of the United States, Spain, and Portugal to an appropriate portion of the slaves. The United States held the right to the 25 slaves taken from the American vessel, while the remainder went to Spain and Portugal. As about one-third of the slaves had died, the court ordered that the loss should be averaged among the three parties, so 16 slaves instead of 25 ended up in American possession. These 16 were returned to Africa the following year, while the rest were sold to American buyers and the proceeds sent as restitution to the Spanish and Portuguese governments.[62]

The central dilemma in the case of the *Antelope* was the conflict between international law and the adjudication of slave trading in the United States. International law dictated that ships and their cargo were to be judged under the laws of their respective nations, leaving the Supreme Court with no choice but to direct restitution to Spain and Portugal.[63] The fact that the slave trade was a legitimate business under Spanish and Portuguese law proved to be problematic for the United States. The close proximity of these nations' colonies meant that slaving vessels frequented American waters and presented numerous opportunities for slave traders to smuggle slaves into the South. No matter how strict or severe the punishment for participating in the slave trade, the United States could not completely prevent slave smuggling until the institution of slavery was abolished in American territory.

Due to laxity in the enforcement, even cases involving American perpetrators often failed to satisfy the aims of the amendment. Between 1820 and 1862, 74 cases of slave trading were brought before American courts, but none of those convicted were actually executed. Recognizing the conflict between the laws of the United States, an editor for *Harper's Weekly* wrote in February 1862 that government officials often felt sympathy for the criminal. They claimed the officials felt it was "so absurd to hang a man for doing at sea that which, in half the Union, is done daily without censure on land."[64] Nathaniel Gordon, a notorious slave trader from Maine, was the first and only person to be executed under the law passed 42 years earlier after his ship *Erie* was captured with 897 slaves packed aboard. That 74 other convicted slave traders had eluded the punishment prescribed for engaging in the trade is a testimony to both the conflicting views of the trade in the United States and the vast discrep-

60 Henry Wheaton, *Reports of Cases Argued and Adjudged in the Supreme Court of the United States*, (New York: R. Donaldson, 1825), 68, https://books.google.com/books?id=wP6HpT0jSWwC&source=gbs_navlinks_s.

61 Wheaton, *Reports of Cases Argued and Adjudged in the Supreme Court of the United States*, 114.

62 Ibid, 69.

63 R. Kent Newmyer, "On Assessing the Court in History: Some Comments on Roper and Burke Articles," *Faculty Articles and Papers* 119 (1969): 6, accessed April 20, 2018, https://opencommons.uconn.edu/law_papers/119.

64 "The Execution of Gordon, The Slave-Trader," *Harper's Weekly*, February 21, 1862, http://blackhistory.harpweek.com/7Illustrations/Slavery/ExecutionOfSlavetrader.htm.

ancy between the law and how it was applied in real courts.

To say the Act of 1807 failed to restore the freedom of the victims of the slave trade is to erroneously assume that the law was passed with that intent. The idea of completely ending the supply of new slaves to the United States and progressing toward total abolition of slavery were major themes of the debates preceding the Act to Prohibit the Importation of Slaves, but failed to manifest in the 1807 bill. Southern dependence on slave labor and Northern appeasement were contributing factors to the contradiction between the purpose and provisions of the Act of 1807. The act, which allowed state governments to sell "rescued" captives, essentially moved profits of the trade from the original slavers' pockets to state treasuries and government informants. The act represented the willingness of Northerners to compromise in order to keep the South in the Union, a policy which had created tension between the states since the Revolutionary War. Southern courts were not exclusive in their leniency toward violators of slave trade laws, as multiple cases of their Northern counterparts reducing punishment or even acquitting offenders occurred.

Congress's enactment of the 1820 law designating slave trading as an act of piracy was more effective at preventing participation in the trade because it served as a strong deterrent to sailors considering a job aboard a slave vessel, but this was the extent of the success of the 1820 law. Similar to its predecessor, discrepancies between the text and the aims of the 1820 Act to Protect the Commerce of the United States and its lenient application in courts weakened its ability to halt the trade, as no slave trader would actually be executed until 1862. Concerned by fears of Southern retaliation and free blacks, American laws passed to address the slave trade between 1807 and 1820 did nothing to discredit the legal codification of owning other human beings as property. The fact that slavery remained a legitimate institution in the United States consistently undermined the legal and moral foundation of the Act to Prohibit the Importation of Slaves, as it allowed the slave trade to propagate in forms which circumvented the Act of 1807 and the 1820 amendment. The shortcomings of these slave trade laws only further demonstrated that eliminating the slave system would require drastic moral and cultural change.

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