NEW YORK UNIVERSITY
JOURNAL OF LAW & LIBERTY

UNCONSTITUTIONALITY OF SLAVERY IN THE DISTRICT OF COLUMBIA[†]

Lysander Spooner

We respectfully request our brethren of the press to copy the following argument, and all persons to give it a careful perusal. If it is not sound, we confess ourselves insane.

For the Chronotype.

UNCONSTITUTIONALITY OF SLAVERY IN THE DISTRICT OF COLUMBIA.

Admitting, for the sake of the argument—what is not true in fact—that slavery has a constitutional existence in the States, it is nevertheless unconstitutional in the District of Columbia—for the following reasons.

All delegated power, to which no other limit is expressed, is limited to the accomplishment of the specific objects for which the power is granted.

[†] This article has been transcribed from Lysander Spooner's handwritten version, on file with the American Antiquarian Society in Worcester, Massachusetts. A version was originally published in the Boston newspaper, *The Daily Chronotype*, vol. 5, no. 61, May 12, 1848.

The objects, for the accomplishment of which the powers of the general government were granted, are declared, in the preamble of the constitution, to be, "to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity".

This preamble is as much the preamble to that clause of the constitution which grants Congress legislative power over the District of Columbia, as it is to the rest of the Constitution; and it as much defines and limits the legislative power of Congress over the District, as it does any of their other legislative powers. Story says, "The true office of the preamble is to expound the nature, *and extent,* and application of the powers actually conferred by the Constitution". (1 *Story's Comm*. 445). This it does by declaring the objects for the accomplishment of which the powers were granted.

Congress, therefore, would have had no power to legalize slavery in the District, even though no express prohibition had been laid upon them to do so. But express prohibitions are nevertheless laid upon them—as follows.

All the *general* prohibitions, laid upon the power of Congress, apply as much to their power within the District of Columbia, as to their power out of it.

For example. The prohibition that "no title of nobility shall be granted by the United States," is as much a limitation upon the power of Congress within the District, as out of it. Of the same character are these several prohibitions, to wit, that "no bill of attainder or ex post facto law, shall be passed"; that "no person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury,"&c.; "nor shall any person be subject to be twice put in jeopardy of life or limb; nor be compelled, in any criminal case, to be a witness against himself; ** nor shall private property be taken for public use without just compensation;" that "excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted".

All these provisions are as much restrictions upon the power of Congress within the District, as out of it. Probably no one will for a moment deny this proposition.

Let us then look at some other prohibitions, having special reference to personal liberty.

"The privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it". (*Art. 1, Sec.* 9).

The writ of habeas corpus necessarily denies the right of property in man, else the writ could always be defeated by pleading property, and giving possession in proof.

Congress having no constitutional power to suspend this writ arbitrarily within the District, this provision is necessarily a constitutional denial that slavery can be legal in the District.

Slavery can be made legal only by a suspension of the writ of habeas corpus, so far as the persons to be enslaved are concerned. Indeed slave laws, whatever they may be in form, are in effect, little or nothing else than a suspension of the privilege of the writ of habeas corpus, as to certain individuals. Slave laws do not, of themselves, reduce any one to slavery. They do not *require* one man to reduce another to slavery. They simply *permit* him to do it, by refusing to the enslaved person the benefit of the writ of habeas corpus—thus leaving him at the mercy of his oppressor, who, by individual force, compels him to serve him.

If Congress can arbitrarily suspend the writ of habeas corpus in the case of one individual in the District, they can arbitrarily suspend it in the case of all persons without distinction, and suffer the strong to reduce the weak to servitude, without any discrimination of persons.

Again. The Amendments to the constitution provide that "Congress shall make no laws abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and petition the government for a redress of grievances;" that "the right of the people to keep and bear arms shall not be infringed;" that "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated," &c.

These prohibitions all apply to the power of Congress within the District of Columbia; and they all imply personal liberty on the part of the people.

Again. If Congress can legalize slavery in the District of Columbia in defiance of the foregoing principles, they can also legalize it in "all places purchased, by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings," (including custom-houses, post-offices, court-houses, &c.), even though such

"places" be situate within the limits of a free State; for the constitution expressly provides that Congress shall have power "to exercise *like authority* over all (such) places", as over the ten miles square. If, therefore, Congress can make a slave of any body in the District of Columbia, there is no escape from the conclusion that they can make slaves of any body and every body who may venture within a fort, arsenal, dockyard, custom-house, post-office, or court-house, owned by the United States, and purchased with the consent of the Legislature of the State in which the same may be.

If the foregoing doctrines be true, there is no legal slavery in the District of Columbia. Not only so, but all slaves, who have ever been brought from the States into the District, have thereby been made legally free. Still further. All slaves *escaping* from the States into the District, thereby become legally free. The constitutional provision for the delivery of fugitives "from service or labor"—(admitting, what is not really the fact, that it applies to slaves in any case)—applies only to those who escape from one *State* into another *State*; not to those who escape from a State into the District."

LS.