The Fuse the Founders Lit

Did the Constitution endorse, and not merely tolerate, slavery? Abolitionists had no doubt it did.

No Property in Man
By Sean Wilentz
Harvard, 350 pages, $26.95

The War Before the War
By Andrew Delbanco
Penguin Press, 453 pages, $30

By David S. Reynolds

ON JULY 4, 1854, the abolitionist William Lloyd Garrison publicly burned a copy of the U.S. Constitution. The occasion was a rally held in Framingham, Mass., to protest the forced return to the South of the ex-slave Anthony Burns, who the year before had fled from Virginia to Boston and was now being hauled back in chains to slavery under the Fugitive Slave Act of 1850.

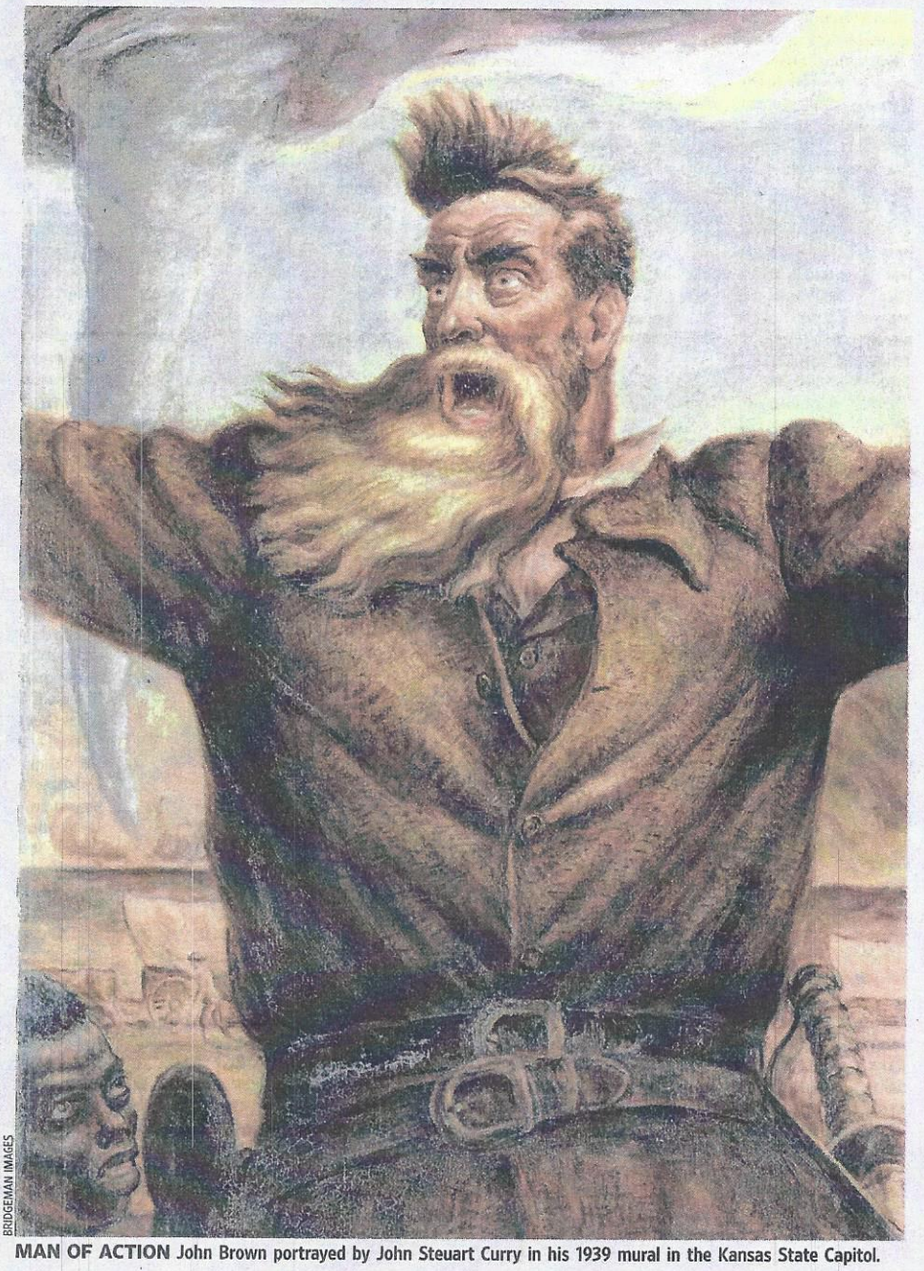
That notorious law added bite to the Constitution's so-called Fugitive Slave Clause—Article 4, Section 2, Clause 3—which mandated that every "Person held to Service or Labour" who had escaped must be returned to "the Party to whom such Service or Labour may be due." Garrison's theatrics at the rally showed his disgust with the clause. Indeed, he called the Constitution a "covenant with death" and an "agreement with hell."

The Constitution had condoned slavery in other ways too. In apportioning representation in the House, it counted the free citizens of each state plus "three fifths of all other Persons," meaning slaves. It also permitted the Atlantic slave trade to continue until 1808, a full two decades after the Constitutional Convention.

Was Garrison justified in viewing the Constitution as hopelessly proslavery? No, said some—most famously, the African-American leader Frederick Douglass and the Illinois Republican Abraham Lincoln. They argued vigorously for an antislavery interpretation of the nation's founding charter. The Princeton historian Sean Wilentz expands on their view in "No Property in Man," a stimulating study that draws on letters, speeches and public debates to enlarge our sense of slavery's political dimension in the founding period.

In defending an antislavery Constitution, Mr. Wilentz takes a controversial position. Several recent historians, including David Waldstreicher, Paul Finkelman and Akhil Amar, have argued that slavery was at the heart of the nation's founding. Slavery was embraced by political leaders and apparently enshrined in the Constitution's text. Twelve American presidents owned slaves, as did other politicians and members of the Supreme Court.

Mr. Wilentz recognizes the proslavery elements of the nation's origins, but he notes that nowhere does the Constitution actually support the ownership of humans. The words "slave" or "slavery" do not appear in the original Constitution, which refers to the enslaved as "persons." He argues that this choice of words was deliberate on the part of the Constitution's framers, most of whom regarded slavery as an institution that must be put on the path to eventual extinction.



BRIDGEMAN IMAGES

MAN OF ACTION John Brown portrayed by John Steuart Curry in his 1939 mural in the Kansas State Capitol.

Mr. Wilentz notes that, at the time of the founding, America was moving in an antislavery direction. By 1787, five New England states and the republic of Vermont (which became a state in 1791) had either banned slavery or were in the process of doing so. Congress passed an ordinance in 1787 that prohibited slavery in territory north and northwest of the Ohio River, later to become the states of Ohio, Indiana, Illinois, Michigan and Wisconsin. It is common knowledge that the Constitution's framers made concessions to slavery in order to hold the Union together. Mr. Wilentz shows that these concessions resulted from tense standoffs and bitter battles. The Deep South initially demanded slavery's ironclad protection. Delegates to the Constitutional Convention like Charles Cotesworth Pinckney of South Carolina and Abraham Baldwin of Georgia objected to even the slightest tampering with slavery. They made aggressive demands that were only partly met by the Upper South and New England. They called for full acknowledgment of their slave population in congressional apportionment and were disappointed with the three-fifths compromise, not to mention the rather tepidly phrased (as they saw it) Fugitive Slave Clause and the naming of a date after which the Atlantic slave trade might be curtailed.

Most of the other framers, Mr. Wilentz notes, recognized that slavery should be allowed to remain where it already existed but not encouraged by the federal government. By treating the enslaved as persons rather than things, he says, the framers adopted a notion of property introduced in the 17th-century British civil wars and kept alive by Enlightenment thinkers. According to this view, the most basic property right was that of self-ownership, a right possessed by every human being. The insistence on self-ownership lay behind James Madison's declaration that it would be wrong "to admit in the Constitution the idea that there could be property in men," since "slaves are not like merchandise, consumed. &c."

As for the three-fifths compromise, that was an effort to placate slavery's supporters, as was the extension of the slave trade until 1808. The latter provision, though it made possible the importation of Africans over the next two decades, at least put the government on record as opposing the indefinite perpetuation of this heinous practice, which even a slaveholder like Virginia's George Mason called "diabolical in itself, and disgraceful to mankind." Two Founding Fathers from Pennsylvania, Benjamin Rush and James Wilson, were sure that terminating the slave trade would lead to the demise of slavery. In sum, Mr. Wilentz argues persuasively, the convention created the "terrible paradox" of "a Constitution that strengthened and protected slavery yet refused to validate it."

The human toll of this paradox is vivified in Andrew Delbanco's sweeping "The War Before the War." The Constitution, Mr. Delbanco notes, was the founders' attempt to stitch together two different nations "with no idea how long the stitching would hold." The founders themselves, Mr. Delbanco shows, were deeply conflicted. Thomas Jefferson owned hundreds of slaves but regarded slavery as unjust. Others who held slaves yet objected to slavery were George Washington, James Madison, Patrick Henry and John Randolph. Benjamin Franklin served as president of an abolition society and yet owned two slaves.

The merciless enforcement of 1850's Fugitive Slave Law led William Lloyd Garrison to call the Constitution a 'covenant with death.'

Mr. Delbanco is well-equipped to probe such historical paradoxes. Among his previous books is a biography of Herman Melville, the masterly explorer of ambiguity whose fiction, including "Moby-Dick," "Pierre" and "Billy Budd," reflected the political and cultural conflicts of the pre-Civil War era. Mr. Delbanco includes Melville and his circle in "The War Before the War." Especially revealing is his discussion of Melville's father-in-law, Lemuel Shaw, who, as the chief justice of Massachusetts, was torn between his conviction that slavery violated natural law and his constitutional duty, as he saw it, to remand fugitive slaves back to the South.

The strength of Mr. Delbanco's volume lies in its evocation of the human cost of the Constitution's fugitive-slave provision, which was supplemented by the congressional bills of 1793 and 1850. The 1850 law, which Mr. Delbanco rightly says was "without mercy," involved the federal government in slave catching, forbade suspected runaways from defending themselves in court, obliged average citizens to help pursue fugitives on demand, and imposed a fine and imprisonment on those who resisted the law.

The Fugitive Slave Act was part of the cobbled-together Compromise of 1850, which was intended to preserve the Union with provisions for both the North and the South. The law, which resulted in the seizure and return of scores of fugitive slaves, caused much pain. The enslaved Margaret Garner, who in 1856 fled Kentucky and crossed the iced-over Ohio River to Cincinnati with her husband and four of her children, was driven to infanticide when slave catchers and federal marshals caught up with the family. With a kitchen knife, Garner cut the throat of her 2-year-old daughter and tried to

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ples which governed its growth.' —A.T. MAHAN

The Founders And the Problem Of Slavery

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kill her other children in order to prevent them from experiencing the horrors of slave life.

Some fugitive-slave stories had successful conclusions. Mr. Delbanco relates many thrilling escape-and-rescue episodes. The light-skinned slave Ellen Craft cut her hair, dressed in male clothes and traveled north from Georgia to New England, posing as a white man accompanied by "his" servant, who was in fact her husband, William. (The disguise was so convincing that female strangers ogled the good-looking Ellen.) The Crafts became abolitionist celebrities when they settled in Boston, but they went into hiding when their Southern master sent bounty hunters after them; the Crafts immediately moved to England. Shadrach Minkins, an ex-slave from Virginia who was captured in a Boston restaurant and brought to trial, gained freedom when a group of activists burst into the courtroom, seized him and sent him to Canada. Similarly, William Henry, a fugitive slave in Syracuse who called himself Jerry, was snatched from jail by abolitionists who sent him north on the Underground Railroad.

The brave abolitionists who saved these and other runaways, Mr. Delbanco observes, have often been hailed as heroes. But, he argues, we must not dismiss the efforts of moderates such as the ministers William Greenleaf Eliot and Ezra Stiles Gannett, who worked against slavery but did not go so far as violating the Fugitive Slave Law. After all, Abraham Lincoln was a moderate who loathed the law and yet felt obliged to enforce it early in his presidency, in deference to the Constitution. Initially dedicated above all to saving the Union, Lincoln soon made emancipation the North's goal in the Civil War. He pushed hard for the passage of the 13th Amendment in January 1865, which provided what he called "a King's cure for all the evils" by abolishing slavery.

Lincoln loathed the Fugitive Slave Law yet early in his presidency felt obliged to enforce it in deference to the Constitution.

In "The War Before the War," Mr. Delbanco cites the aphorism, purportedly put forward by Mark Twain, that history does not repeat itself but often rhymes. We see lots of "rhyming" in the aftermath of the constitutional struggles probed by Mr. Wilentz and the social turmoil rendered by Mr. Delbanco. Mr. Wilentz's "terrible paradox" points to the Constitution's carefully balanced perspectives, which later gave rise to contrasting Supreme Court decisions, from the reactionary rulings in *Dred Scott v. Sandford* (which denied citizenship to black people) and *Plessy v. Ferguson* (which legalized racial segregation) to liberal ones like *Brown v. Board of Education*.

Mr. Delbanco includes frequent comparisons between 19th- and 21st-century America. Rampant suspicion and fear of ethnic others; the controversy over what we now call sanctuary cities, in which local authorities defy federal rules; and a seemingly unbridgeable cultural divide between political opponents: These and other phenomena were as agonizingly present then as they are now. For those interested in exploring the roots of today's social problems and learning about early efforts to resolve them, these stirring books are well worth reading.

Mr. Reynolds, a Distinguished Professor at the CUNY Graduate Center, is the author of "Walt Whitman's America" and "John Brown, Abolitionist."