

Should Article I of Chapter I of the Vermont Constitution be Amended to Make Clear that Slavery and Indentured Servitude in Any Form are Prohibited?

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I. Article I of Chapter I of the Vermont Constitution of 1777

Article I of the state constitution does not need to be amended.

Article I makes clear that “all persons* [including those who may have been brought into the state as slaves] are born equally free and independent, and have certain natural, inherent, and unalienable rights, amongst which are the enjoying and defending life and liberty, acquiring, possessing and protecting property, and pursuing and obtaining happiness and safety”

*I do not know anyone who claims that the framers did not intend to include those who had been brought into the state as slaves as “persons” within the meaning of this provision.

II. Vermont Supreme Court Interpretation

Interpreting this provision in 1802, the Vermont Supreme Court held: “Our constitution is express, no inhabitant of the State can hold a slave” and if anyone holds a “bill of sale” for a slave, whatever the legal effect of such a bill in other states, “the bill of sale ceases to operate here.”

Windsor v. Jacobs (1802)

III. Interpretation in Practice

- While it is true that subsequent to adoption of Article I, some people brought slaves into the state and kept them as slaves here, and that some people brought with them “bills of sale” claiming to vest ownership in the slaves, there is not a single Vermont court decision, at least I have not been able to find one, upholding and enforcing a bill of sale for a slave no matter what the age of the slave was.

IV. First Conclusion

- It is safe then to conclude that, as a matter of state constitutional law, from the first state constitution down to the present, the shared and accurate understanding has been that (1) the Vermont state constitution was the first state constitution to ban slavery, (2) that slaves brought into the state were considered “persons” within the meaning of Article I, and (3) whatever the actual practice on the part of a few Vermonters, “no inhabitant of the state” could legally “hold a slave” and any bill of sale purporting to show ownership in a slave, whatever its legal force and effect in other states, “ceased to operate” in Vermont the minute it entered the state.

V. Source of Confusion

- So why then does Article I go on to provide: “therefore no person born in this country, or brought from over sea, ought to be holden by law, to serve any person as a servant, slave or apprentice, after arriving to a (certain age for males and a certain age for females) unless bound by the persons own consent.”

VI. The Problem of Indentured Servitude

- This provision was primarily aimed at limiting abuses of the institution of “indentured servitude.”
- “Indentured servitude” was widespread in the colonies and in the new states after the Declaration of Independence. In some places, up to half the workforce was made up of “indentured servants.”

VII. Indentured Servitude: Mutually Beneficial Arrangement

- Why not ban it entirely? Because it had proved to be a mutually beneficial arrangement for both employers and workers. Workers (the indentured servants) got free passage to this country, something they otherwise could not afford (passage underwritten in many cases by the ship owner) in return for committing to a period of labor, often taking the form of an apprenticeship, without formal compensation. It was subject to abuse (sometimes the contract of servitude continued for extremely long periods), but in general it was an arrangement from which everyone benefitted.

VIII. How did Article I Seek to Deal with Potential Abuse?

Simple: It just put a limit on the number of years that a contract for indentured servitude could be legally enforced – without the individual's own consent – a number set by when males and females reached a certain age: 21 for males, 18 for females. After that, they were free as a matter of state constitutional law to make their own arrangements.

VIII. So why include “slaves” among those who were as a matter of state constitutional law entitled to emancipation when they reached that age?

- We don't have a definitive answer to that and probably never will. But it seems reasonable to conclude that, if this provision had not explicitly included within its provision those who had been brought into the state as slaves, the slave owner might claim, “This provision does not apply to me. I don't have to let my slaves go when they reach a certain age because this provision only applies to ‘servants’ and ‘apprentices.’”

IX. Is there any evidence that, in adopting this provision, the framers wished to give constitutional sanction to child slavery?

- No. Period.
- That would have run directly counter to the view, expressed in *Windsor v. Jacobs*, that “no inhabitant of the State can hold a slave” and that any bill of sale for a slave would not be legally enforceable in the courts of the state.

X. Follow up: In ruling as the Vermont Supreme Court did in *Windsor v. Jacobs*, were the two justices who joined in that opinion just trying to provide cover for Jacobs, who at the time was also a member of the court?

- (1) No evidence that the principles expressed by the members of the court were not genuinely held
- (2) No evidence the remaining two justices liked or even respected Jacobs
- (3) They had other ways of nullifying the contract other than through what clearly was intended as a condemnation of slavery and of Jacob's conduct in bringing into the state and holding a slave.

XI. Overall Conclusion

- (1) There is no need to amend Article I of the Chapter I of the Vermont constitution to make clear that, as a constitutional matter, there was no place for slavery in the state.
- (2) If you amend Article I in the way contemplated, you will be losing – not the history itself – but the conscious awareness of that history and why we should be proud of it.
- (3) But if you feel you have to do it, the proposed language of the amendment is probably the best, the cleanest, way to do so.