

Dr. James Oakes on the Gag Rule of 1836

Erik Chaput: I have the privilege to be with Professor James Oakes from the CUNY Graduate Center in New York. And Professor Oakes is going to be talking with us today about the Gag Rule. And this video is designed to be used in conjunction with other material on the Dorr Rebellion Project website and lesson plans.

So, Professor Oakes, how do you see the debate over the Congressional Gag Rule fitting into the rise and kind of the broad spectrum of anti-slavery politics in the 1830s?

James Oakes: I think it's one of the least appreciated sources of the controversy between the North and South over slavery. And I think historian William Freehling called the Gag Rule controversy, the introduction of the Gag Rule, the Pearl Harbor of the secession crisis. And I think that's plausible. I think, in fact, I would say it's the Pearl Harbor of the Civil War.

It was spurred by the decision in December of 1834 by the American Anti-Slavery Society to launch a concerted campaign to bombard Congress with petitions calling for the abolition of slavery in Washington DC. The petitions got underway very quickly. They were organized all across the country. Vast numbers of, I mean we're talking hundreds of thousands of petitions of interest, signatures eventually were sent to Congress calling for abolition in Washington DC.

In an attempt to stem the flow of these petitions and to silence the discussion about slavery that they invariably provoked in Congress, it was proposed in December of 1835, a year after the campaign began, to simply gag all the petitions. There were extreme versions of the gag proposed by James Henry Hammond of South Carolina in the House and by John C Calhoun in the Senate to simply refuse to receive any such petitions. But that was too much of a violation of the right of petition. Instead, the gag was constructed in such a way to receive the petitions and immediately reject them, as both the Senate and the House did.

Again, the goal was to silence debate over slavery, but it had the opposite effect. It very quickly became clear to the abolitionists that they had found themselves an issue in which they could prick Northern consciences over slavery by pointing out that the demands of the defense of slavery were now such that the fundamental rights of all Americans, the basic right of petition was being thwarted in order to preserve slavery in the South.

So rather than do what the proposed, or what the advocates of the gag, what the people who introduced the gag thought they were doing, which John Quincy Adams said was to tranquilize, to be more precise, it had exactly the opposite effect. It produced an explosion of petitions, rather than the diminution of them because, especially in the House, the gag was imposed as a resolution that had to be reintroduced every single December when Congress came back into session. And invariably, inevitably, that provoked another set of debates, another set of attempts led initially by former President John Quincy Adams, but soon he was supported by the arrival of radicals like Joshua Giddings from Ohio.

And not only did the gag fail to stop the debate over these petitions, it actually exploded both the number and the scope of the petitions, right, because the defense of the gag was based on the principle that slavery was a constitutionally protected right of property and a petition calling for the abolition of slavery in Washington DC was unconstitutional because even though the Constitution gave Congress the power to make all needful rules and regulations governing the District of Columbia, it could not adopt rules that violated the Constitution.

The problem is that once you make that your argument for banning petitions concerning the abolition of slavery in Washington DC, it is inevitably going to affect the number of other policies that Northern anti-slavery people had long accepted, which is, for example, the banning of slavery in the Western Territories. You can't do that, Congress can't do that, if it's a constitutionally protected right of property. Protecting the Civil Rights and the due process rights of fugitives in the North who are accused, or Blacks who are accused of being fugitives, you can't do that if slaves are only property, because property doesn't have due process rights.

The result, in other words, was the expansion of the scope of the petitions. You started getting petitions calling for a ban on slavery in the Western Territories, due process rights for accused fugitives, regulation of the domestic slave trade, ban on any new slave states admitted to the Union, and the like. So, far from closing down debate over slavery, the Gag Rule expanded the debate over slavery to include issues like the civil rights of Northerners who are being, you know, whose rights of petition are being suppressed, and the due process rights of Northerners who are, you know, being suppressed. And so, the consequences of the Gag Rule were dramatic.

At the outset, it was, it was framed as a Democratic party issue. And so every Democrat in Congress, in both the House and Senate, basically almost every Democrat, voted to support the gag. And the Whig party also, if the Whigs in the South, the Southern Whigs, were determined to prove their bona fides. And so all Southern Whigs basically supported the gags in both Houses.

The only source of opposition to the Gag Rules initially were Northern Whigs who had an anti-slavery tradition. That's the tradition that Abraham Lincoln, for example, would come out of. And the history of their successive debates over the gag is the history of the increasing unwillingness of Northern Democrats to continually reintroduce the gag year after year after year. So, the fall, if you watch the debates in the votes from 36 to 37 to 40 to 41 to 42, you'll see the steady withdrawal of support among Northern Democrats for the gag, until finally in the early 1840s the Gag Rule is, enough Northerners are opposed to it that the Southerners can no longer sustain the gag anymore.

So you see the effect of it was a gag designed to tranquilize debate over slavery had the effect of exposing the fissure within the Whig party over slavery between Northern and Southern Whigs and creating a fissure within the Democratic party over slavery and expanding the scope of anti-slavery politics in such a way that by the end of, and also forcing Northerners, anti-slavery Northerners, and pro-slavery Southerners to develop theoretical justifications, constitutional justification, for their positions. So out of the Gag Rule comes a much more coherent, theoretical debate over slavery by anti-slavery Northerners and anti-slavery Southerners, as well as a clear divide within the political system in both political parties over slavery, and something like an anti-slavery project. That is the things that the gag, that the petitions called for eventually, are something I call the anti-slavery project. All the things Congress could do to surround the slave states with free states, free territories, free oceans, were represented in the petitions that anti-slavery Northerners signed in increasing numbers.

And finally, it produced the first major, first congressional debate over the role of women in politics because disproportionately these petitions were signed by women. The famous first petition was called the Fathers and Rulers Petition, addressed by the ladies of such and such a town, such and such a county. And they were not only signed in large numbers by women, indicating that this is the way women could participate in politics because they couldn't vote, but also it was something women were actively engaged in organizing these petition drives, going from door to door all across the North, all over the Midwest, things like that.

And so, the result was a debate in Congress over, not only the legitimacy of petitions concerning slavery but the legitimacy of petitions from women, who increasingly were participating in the political system by

means of this. It's a reason why historians increasingly suggest that it's a mistake to focus on the 1848 Seneca Falls Rights event as the beginning of the Women's Rights Movement, when in fact the Women's Rights Movements had its origins in the anti-slavery movement, in particular in the petition drive designed to counteract the gag.

So, the consequences of the Gag Rule were dramatic and dramatically the opposite of what the initial attempt to gag petitions was designed to do, which is silence discussion over slavery.

Erik Chaput: Building off of that Professor Oakes, do you see, you characterize the anti-slavery project, and obviously there's a connection here with the First Amendment as they're embracing it to petition, to discuss, obviously on the floor of Congress, sending in as you said massive, massive roles of signatures that get sent. And, you know, obviously John Quincy Adams makes good use of them for, you know, debates on the House floor as he's trying to bring them up. What do you see happening in the North as the gag, is it helping to increase membership in these abolitionist and anti-slavery societies that continue to grow at state levels? And at times we also see opposition, you know, that there's mobs that begin to attack, certainly the death of Elijah Lovejoy in 1837. That there's, you know, strong opposition in the North to abolitionist activities. How do you see the Gag Rule and the debate over that affecting the growth and also the opposition that abolitionists take? And sometimes obviously their lives are on the line.

James Oakes: Right, so we too often look at the mobs as the barometer of Northern public opinion on slavery. Northerners hate it. Abolitionists, they mobbed, abolitionists in the cities, they burned down. But the mobs are a response to the explosion of anti-slavery activity among Northerners in the mid to late 1830s. So, as anti-slavery activism explodes across the North, so do the number of mobs, anti-abolitionist mobs, explode across the North. So, you've got this conflict in the North that is to a certain extent resolved as the ability of the Democratic party to hold on to Northern Democrats wains. And the, you know, the focus of anti-abolitionist mobs, the organizing apparatus of Northern anti-abolitionist mobs tended to be the Democratic party. The local Democratic parties tended to be the end, the source of all anti-abolitionism. And as Northern Democrats, over the course of this 10-year-long debate over the Gag Rule, are pulling away from their opposition their support for the gag because of the pressure from their constituents in the North, the number of mobs declines as well. And, you know, the mobs peak at the moment the anti-slavery petitions get underway. And they gradually decline. And they've substantially disappeared by the time the Gag Rule is overthrown.

Erik Chaput: Well, Professor Oakes, thank you very much for being with us here today. For teachers and students who are watching this video, we hope that this will be the springboard for you to dive into the material that we have digitized with the help of the Rhode Island State Archives. And the primary source material is designed to be used both in class and out of class, along with the supplemental readings that we have uploaded to the Dorr Rebellion Project website. So, Professor Oakes, thank you very much for your time.

James Oakes: My pleasure.