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BOOK REVIEWS AND NOTES

THE RUTLEDGES, THE CONTINENTAL CONGRESS, AND INDEPENDENCE

JAMES HAW*

THE MAJOR OUTLINES OF THE STORY ARE WELL KNOWN. JOHN Rutledge was one of the more conservative delegates in the First and Second Continental Congresses, a reluctant rebel who opposed independence to the last. Edward Rutledge's position was somewhat closer to the center in the spectrum of Congressional opinion. He shrank from independence in June 1776, but his opposition sprang from tactical considerations rather than conviction, as his most careful biographer has emphasized.[1] Still, many aspects of the story require clarification. The South Carolinians' position on trade in the first Congress requires clarification. John Rutledge's position did evolve in response to events between 1774 and early 1776, though not to the point of advocating independence. Edward Rutledge's record during those years contains at least one puzzling inconsistency. And it is not true, as has often been said, that John Rutledge expressed a desire for reconciliation with Britain as late as 1778. A survey of the Rutledges' views on resistance to Britain and independence, concentrating on their positions in the First and Second Continental Congresses from 1774 to 1776, may help to resolve some issues and clarify others.

In 1774 John Rutledge at thirty-five had established himself as one of South Carolina's most distinguished lawyers and political leaders. He had been a firm supporter of the rights of the "country" in the Commons House of Assembly and an equally firm adversary of British colonial policies over the past decade. So far as the scanty surviving record reveals, though, Rutledge confined his opposition to the legislature, the courts, and deliberative public meetings; he was apparently not a leader of extralegal crowd activity. Educated in the law in England, John Rutledge valued the British connection and sought to preserve colonial rights within the empire.

Ten years younger than his brother, Edward Rutledge completed his English legal education in 1772 and returned to Charleston early in 1773. He declined election to the Commons House of Assembly, apparently preferring to establish his law practice. His successful defense of printer Thomas Powell, jailed for contempt of the colony's council, established his reputation as a champion of popular liberty.[2] But in 1774 Edward Rutledge was a

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[1]Richard Brent Clow, "Edward Rutledge of South Carolina, 1749-1800: Unproclaimed Statesman" (Ph.D. diss., University of Georgia, 1976), p. 118.

[2]Ibid., pp. 11-13, 21-24.

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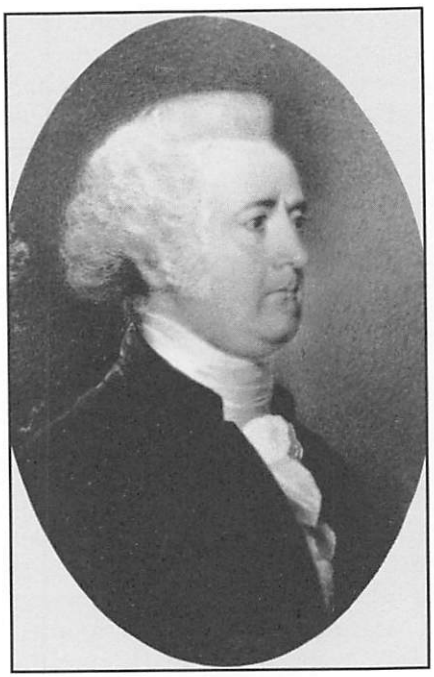
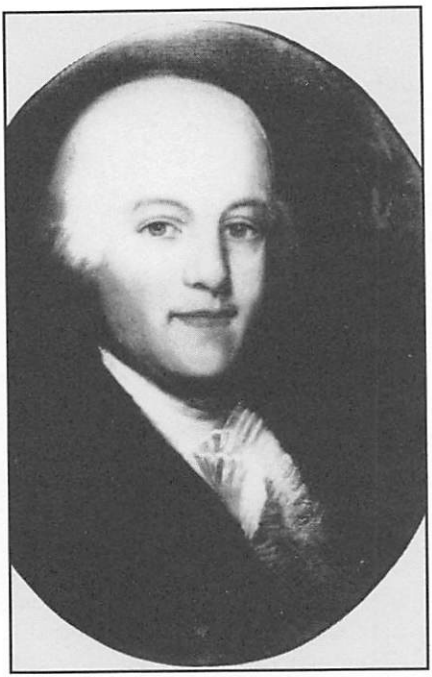


John Rutledge, photo from the collections of the South Carolina Historical Society



Edward Rutledge, photo courtesy of The Charleston Museum, Charleston, South Carolina

political neophyte. He was one of the first Americans to begin his career in public office in a body representing the union of the colonies.

After news of the Boston Port Act reached Charleston, John and Edward Rutledge, Henry Middleton, Christopher Gadsden, and Thomas Lynch were elected at a public meeting on July 7, 1774, to represent South Carolina in the First Continental Congress. There was considerable disagreement among South Carolinians over the means of resistance to Britain's latest assault on colonial rights. Artisans, mechanics, and some planters advocated immediate nonimportation of British goods and nonexportation to Britain in order to apply economic pressure for a reversal of policy. Merchants opposed a trade boycott as likely to ruin South Carolina. The Rutledges successfully urged a middle course: the Continental Congress should decide the issue.

They argued that one united plan of American resistance would be more effective than thirteen different ones. South Carolina's delegates should have full power to act as they thought best in Congress, and the

colony should take no action until Congress's decision was known.[3] Their position had considerable appeal. It emphasized the need for American unity. It temporarily avoided the divisive issue of a trade boycott and allowed both sides to hope to prevail in Congress. It made the Rutledges acceptable choices as delegates without committing them to a specific position in Congress. And it ensured that gentlemen in a deliberative assembly, not crowds in the streets or at public meetings, would make the crucial decisions.

As the delegates to the First Continental Congress arrived in Philadelphia, they began to take one another's measure, identifying likely supporters and probable opponents. Connecticut's Silas Deane found both Rutledge brothers "ingenious, but impetuous in the Cause they are engaged in." Others quickly pegged John Rutledge as one of the more conservative delegates. Pennsylvania's Joseph Galloway, who yearned for a lasting reconciliation with Britain, discovered that John Rutledge's "Sentiments and mine differ in no one Particular so far as I explained myself — and I was reserved in no Point save that of a *Representation in Parliament*. He . . . has looked into the Arguments on both Sides more fully than any I have met with," Galloway added, "and seems to be aware of all the Consequences which may attend rash and imprudent Measures." John Adams recorded suspiciously that Rutledge, like Galloway and other likely opponents of the strong measures that Adams advocated, "maintains the Air of Reserve, Design and Cunning."[4]

Edward Rutledge initially struck other delegates as more radical than his brother, though less so than his colleague Gadsden. Galloway found the younger Rutledge "rather warm," and John Adams at first thought him "high enough. A Promise of the King was mentioned. He started 'I should have no Regard to his Word. His Promises are not worth any Thing,' etc. This is a young, smart, spirited Body."[5]

In fact, Edward Rutledge proved more radical than his brother mostly in rhetoric. The two Rutledges were usually in accord on the substantive

[3]*South Carolina Gazette* (Charleston), July 11, 1774; John Drayton, *Memoirs of the American Revolution . . .*, 2 vols. (Charleston: A. E. Miller, 1821; repr., n.p.: Arno Press, 1969), Vol. I, pp. 126-32; Edward Rutledge to Ralph Izard, July 21, 1774, Anne Izard Deas, ed., *Correspondence of Mr. Ralph Izard, of South Carolina, From the Year 1774 to 1804* (New York: Charles S. Francis & Co., 1844; repr., New York: AMS Press, 1976), pp. 2-4; David Ramsay, *History of South Carolina, from Its Settlement in 1670 to the Year 1808*, Vol. 2 (Charleston: David Longworth, 1809), p. 270.

[4]Silas Deane to Elizabeth Deane, [Sept. 7, 1774], Joseph Galloway to William Franklin, Sept. 3, 1774, and Diary of John Adams, Sept. 3, 1774, Paul H. Smith, ed., *Letters of Delegates to Congress, 1774-1789*, 16 volumes to date (Washington, D.C.: Library of Congress, 1976-), Vol. I, pp. 34-35, 24, 8.

[5]Galloway to Franklin, Sept. 3, 1774, Diary of Adams, Aug. 30, 1774, ibid., pp. 24, 4.

issues before the Congress. Both put a high value on reconciliation with Britain. Neither was willing to yield an inch on American rights or to overlook any grievances to achieve reconciliation. Both advocated a total suspension of trade. The objective, Edward said, was "a Bill of Rights, and a Plan of permanent Relief."[6]

The Congress began its work by appointing a committee of two members from each colony to draft a statement of American rights and grievances and a plan of redress. John Rutledge and Thomas Lynch were elected to represent South Carolina on this crucial committee. The other delegates had little to do for more than two weeks while the committee argued over the substance of its report.

The committee quickly ran into difficulty on the most basic of questions, American rights. Richard Henry Lee of Virginia proposed to base those rights on the law of nature, the British constitution, the colonial charters, and precedent. New York's John Jay added that the first immigrants to America had "a Right, to erect what Government they please[d]." These ideas were alarming to John Rutledge. Natural law was a potentially revolutionary principle that could lead to radical conclusions. If the first colonists were in a state of nature and could establish their own governments, only the colonial legislatures, not Parliament, had any legitimate authority in America. Rutledge believed, on the contrary, that Parliament could adopt general laws for the empire, such as trade regulations. He quickly responded that the colonists did not lose their allegiance to England by emigrating to America. "They had no Right to elect a new King," nor could they "set up what constitution they please[d]." The British constitution alone, not the law of nature, was the proper foundation of colonial rights. In the days ahead Rutledge apparently wrote a proposed resolution basing American rights on Britain's constitution and laws and the colonial charters. The colonial legislatures, he believed, had control over *"All Cases of Taxation and internal policy,"* and no British authority could infringe on the rights and powers of the colonies.[7] Rutledge lost on one point. The law of nature was included as one basis of American rights. Whether or not Parliament had any power over the colonies was a hotly contested issue until almost the end of the Congress. Finally John Rutledge helped resolve the dispute by persuading John Adams to write compromise language that few liked but all could live with. Americans would of necessity *consent* to Parliamentary trade regulations, but Parliament could not tax them or

[6]Adams, notes of debates, [Sept. 28, 1774], ibid., p. 111.

[7]Sept. 6, 7, 23, 1774, Worthington Chauncey Ford, ed., *Journals of the Continental Congress, 1774-1789*, 34 volumes (Washington, D.C.: U. S. Government Printing Office, 1904-1937), Vol. I, pp. 26, 28, 42; Adams, notes of debates, Sept. 8, 1774, and John Rutledge (?), proposed resolutions, [Sept. 1774], *Letters*, Vol. I, pp. 46-47, 44. Smith notes that the resolutions were probably but not certainly Rutledge's.

interfere in their local affairs.[8]

There was also controversy over the statement of American grievances. Virginia's delegates were instructed not to include violations of American rights before 1763 in order to emphasize the malignity of George III's reign, and Maryland and North Carolina would not endorse a declaration in which Virginia did not concur. The South Carolinians were upset by the limitation. Thomas Lynch protested that "some of the worst Acts" had occurred before 1763. John Rutledge reminded Congress that the extension of admiralty jurisdiction, violating the right of trial by jury, had begun before that date. That assault on liberty he labelled "the most enormous of any Whatever." But Virginia's position prevailed.

Unwilling to overlook any grievances, the Rutledges also opposed substantive concessions to Britain. When John Rutledge was appointed to a committee to draft an address to the king seeking redress, one delegate moved that the petition include an offer to pay for the tea destroyed at Boston. Both of the Rutledges spoke against this motion, which was defeated by unanimous vote of the colonies.[9]

Unyielding in their support for American rights, the Rutledges nevertheless sought a reconciliation with Britain that would safeguard those rights. They were surely disconcerted when Congress endorsed the Suffolk Resolves, originating in Boston, which based allegiance to the king only on compact and called for strong resistance to Britain, including defensive war if necessary. Conservatives countered with Joseph Galloway's plan to establish an American parliament representing all the colonies, which along with the British Parliament would have to approve all laws affecting the colonies. Here was an intriguing proposal to safeguard American liberty within the empire. Edward Rutledge remarked that it was "almost a perfect Plan." Nevertheless the Galloway Plan was narrowly defeated. In other ways, too, the Rutledges sought to avoid placing further obstacles in the way of reconciliation. When Richard Henry Lee moved that the colonies' militias be made adequate for defense so that British troops would not be needed in America, the Rutledges were quick to protest. They saw the proposal as provocative, having as its real object preparation for war with Britain. John exclaimed that Lee's motion was "in degree, a Declaration of Warr." Likewise, Edward Rutledge spoke against Christopher Gadsden's motion to suspend payment of debts to Britain when nonexportation took effect.[10]

[8]Adams, Autobiography, in Edmund C. Burnett, ed., *Letters of Members of the Continental Congress* (Washington, D.C.: Carnegie Institution, 1921; repr., Gloucester, Mass.: Peter Smith, 1963), Vol. I, p. 46n.

[9]Sept. 24, 1774, *Journals of the Continental Congress*, Vol. I, pp. 42, 53; S. Deane, diary, (Oct. 5, 1, 1774) *Letters*, Vol. I, p. 144, 133; Drayton, *Memoirs*, Vol. I, pp. 167-68.

[10]Adams, notes of debates, [Sept. 28, 1774], S. Deane, diary, [Oct. 3, 6, 1774], *Letters*, Vol. I, pp. 111, 138-139, 153.

THE OTHER MAJOR ISSUE BEFORE THE CONGRESS WAS THE controversial one of suspending trade with Britain. The South Carolina delegates initially agreed to a common position on that issue. They advocated immediate nonimportation of British goods, and an immediate nonexportation of American products to any part of the world. That way, they argued, no colonial products could reach Britain indirectly through third countries, making the boycott more effective. "A few months" of such a policy, Edward Rutledge believed, would have "put everything to rights again" by damaging England's economy and forcing a reversal of policy.[11]

There was another motive for this position in the minds of all the South Carolinians except Gadsden. They were determined that nonexportation should not impose a disproportionate economic burden on their colony. South Carolina's principal exports, rice and indigo, were enumerated products that could be legally exported only within the empire. The other southern colonies were in a similar position, but New England and the middle colonies produced mostly commodities that could be sold anywhere in the world. Nonexportation to Britain and the empire alone would therefore devastate the economies of colonies like South Carolina, while placing a comparatively light burden on others. "I saw no reason," Edward Rutledge later wrote, "why the inhabitants of this [Pennsylvania], and the neighbouring colonies, should have full liberty to export their wheat and flour to every part of Europe, and that we should be restricted so much in our trade." Total nonexportation, he urged, would equalize the sacrifices of the various colonies, and "equality is the basis of public virtue."[12]

Not surprisingly, South Carolina's proposal was unacceptable to the Congress. Most of the delegates saw no reason to suspend trade with nations other than England. And there was an obstacle to immediate nonexportation of any variety. The Virginia delegates' instructions barred them from agreeing to nonexportation before August 10, 1775, so that their 1774 tobacco crop could be marketed in the spring of 1775. Edward Rutledge used Virginia's instructions to hammer home once again the unequal burden that nonexportation would place on South Carolina. Virginians, he argued, could easily grow wheat instead of tobacco, as some of them were already doing, and thus they would not be affected. But South Carolina would "loose all our Trade." Nevertheless he still favored immediate nonexportation.[13]

Congress finally agreed to nonimportation of British goods beginning

[11]Drayton, *Memoirs*, Vol. I, pp. 169-170, Edward Rutledge to Izard, Oct. 29, 1774, *Correspondence of Izard*, Vol. I, pp. 23-24.

[12]Drayton, *Memoirs*, Vol. I, p. 170; Edward Rutledge to Izard, Oct. 29, 1774, *Correspondence of Izard, Vol. I*, pp. 23-24. A partial exception to enumeration allowed the direct export of rice to southern Europe.

[13]Adams, notes of debates, [Sept. 26-27?, 1774], *Letters*, Vol. I, p. 104.

on December 1, 1774, and nonexportation to Britain and the British empire on September 10, 1775 if American grievances were not redressed by that date. That agreement was embodied in the Continental Association. Meanwhile, the Rutledges, Middleton, and Lynch had proposed a new way of equalizing the sacrifices involved. If other colonies could continue to export to foreign countries, rice and indigo should be exempted from nonexportation so that South Carolina would not be ruined. It is tempting to conclude that their earlier advocacy of total nonexportation was calculated at least in part to lay the foundation for this demand; the exemption may have been John Rutledge's real object all along, though Edward seems to have been genuinely committed to total nonexportation. At any rate, the four South Carolinians clung to their position so firmly that Congress marked time for several days in the hope that they would reconsider. On October 20, when Congress moved to final approval of the Association, the Rutledges, Lynch, and Middleton walked out. Gadsden, deeply embarrassed by what he saw as his colleagues' self-interested obstructionism, offered to sign the Association alone for his colony. But Congress chose to summon his colleagues once again. The four now offered, over Edward Rutledge's private objections, to settle for the exemption of rice alone. Congress grudgingly agreed for the sake of unity, and the Association was completed. After approving the petition to the king and addresses to the British and American people, the delegates adjourned on October 26. Congress would meet again on May 10, 1775, unless the crisis was resolved before then.[14]

Edward Rutledge privately disapproved of many of the Congress's decisions. He liked the declaration of American rights, but saw no reason to ignore violations of those rights prior to 1763. His greatest disappointment, he said, was the failure to adopt immediate nonimportation and total nonexportation, and he still disliked the concession on indigo exports. Nevertheless he expressed his dissatisfaction only to friends like Ralph Izard in England who would not publicize his views in South Carolina. Edward Rutledge knew that his colony had to be rallied behind the position that Congress, for better or worse, had taken. And there was his own and his family's political position to consider. He knew that the rice exemption would be controversial for two reasons. First, it safeguarded the interests of rice planters while those of indigo growers were sacrificed. Rice was the predominant crop in the parishes near Charleston. Indigo was grown

[14]Drayton, *Memoirs*, Vol. I, pp. 169-170; Edward Rutledge to Izard, Oct. 29, 1774, *Correspondence of Izard*, Vol. I, pp. 23-24; Merrill Jensen, *The Founding of a Nation: A History of the American Revolution, 1763-1776* (New York: Oxford University Press, 1968), pp. 496-497; Frank W. Ryan, Jr., "The Role of South Carolina in the First Continental Congress," *South Carolina Historical Magazine* 60 (1959), pp. 151-152. The last two sources differ with my account of the South Carolina delegates' position.

mostly on the sea islands, especially Edisto and St. Helena; inland, along the Santee, Congaree, and Wateree Rivers; and around the Black and Peedee rivers in northeastern South Carolina. The rice exemption was thus partial to the area and the planters that had always controlled the colony. Rutledge was worried about the effects of the unequal treatment accorded different parts of the colony, noting in particular that St. Helena had already been "not well affected." Second, Christopher Gadsden, whose stern sense of public virtue was offended by any exemption, would make an issue of it. The rice exemption opened a lasting political breach between Gadsden and the Rutledges.[15]

With an eye to those considerations, Edward Rutledge wrote to Thomas Bee in Charleston in a very different tone than his letter to Izard:

> The province will not be able to account for our conduct until we explain it, though it is justifiable upon the strictest principles of honour and policy. Don't be alarmed; we have done no mischief, though I am sure, if Mr. _____[Gadsden?] had had his way, we should. But you may thank your stars you sent prudent men, and I trust that the youngest is not the least so.[16]

Defending the rice exemption in the face of Gadsden's objections and opposition from growers of indigo and other commodities was not easy, but the Rutledges and their colleagues succeeded. At the First Provincial Congress in January 1775, John Rutledge explained that he considered it his duty to defend South Carolina's interests when it became obvious that the northern colonies "were less intent to annoy the mother country . . . than to preserve their own trade. . . . For his part, he could never consent to our becoming dupes to the people of the north." That argument and a plan to compensate indigo planters and other producers of commodities subject to nonexportation from the proceeds of the rice crop satisfied a narrow majority. The same delegates were reappointed to represent South Carolina at the Second Continental Congress.[17]

[15]Edward Rutledge to Izard, Oct. 29, 1774, *Letters*, Vol. I, pp. 252-254; Jerome J. Nadelhaft, *The Disorders of War: The Revolution in South Carolina* (Orono: University of Maine at Orono Press, 1981), pp. 22-23; Richard Walsh, ed., *The Writings of Christopher Gadsden, 1746-1805* (Columbia: University of South Carolina Press, 1966), pp. 117-118.

[16]Edward Rutledge to Thomas Bee, [Oct. 1774], *Letters*, Vol. I, p. 255.

[17]William Edwin Hemphill and Wylma Anne Waites, eds., *Extracts from the Journals of the Provincial Congresses of South Carolina, 1775-1776* (Columbia: South Carolina Archives Department, 1960), pp. 21-22, 24-29; Henry Laurens to John Laurens, Jan. 18, 1775, David R. Chesnutt et al, eds., *The Papers of Henry Laurens*, Vol. X (Columbia: University of South Carolina Press for the South Carolina Historical Society, 1985), pp. 29-30; Drayton, *Memoirs*, Vol. I, pp. 169-176.

BY THE TIME THE SECOND CONGRESS MET IN MAY 1775, rising radicalism had made the internal situation in South Carolina more tenuous, Parliament had declared the colonies in rebellion, and fighting had begun at Lexington and Concord. Nevertheless the Rutledges' objective as the Congress opened remained the same. They still wanted reconciliation with Britain, but only on terms that secured American rights and redressed all important grievances.

Congress spent May and early June considering the state of America, often interrupted by attention to pressing developments and a myriad of details. One of the most urgent questions was how best to manage the war effort. On May 16 Richard Henry Lee introduced "proposals for raising an Army." Lynch and John Rutledge voiced agreement. The latter, though, remarked "that previously some other points must be settled, such as do We aim at independency? or do We only ask for a Restoration of Rights and putting of Us on Our old footing." Rutledge, according to Silas Deane, spoke "long and well" on that issue. Deane did not note what position Rutledge took, but probably he wanted to commit Congress explicitly to the proposition that war did not imply independence.[18]

John Rutledge still yearned for preservation of the empire, but by 1775 not the empire precisely as it had been before 1763. On May 24 Maryland's Samuel Chase interjected the issue of Parliament's right to regulate trade into the debate on military measures. Chase, who had supported that right in the First Continental Congress, spoke "in his old strain," as did John Dickinson. John Rutledge replied that he was "against any Concession whatever, that Lord North has given Us his Ultimatum with which We cannot agree — Treats Dickinsons plan with the utmost Contempt — and is so severe that *Chase* rises to explain himself." Apparently the elder Rutledge now rejected Parliament's power over the colonies altogether. If so, he believed that the colonies' only tie to England was allegiance to the king. On June 3, when advocates of reconciliation carried a motion to petition the king asking for a peaceful settlement, John Rutledge was appointed to the committee that drafted the petition.[19]

Trade became a major issue in Congress as the September 10 date for the beginning of nonexportation approached. One exception to the Association was made on July 15, when Congress authorized exports that were sold to

[18]Edmund Cody Burnett, *The Continental Congress* (New York: Macmillan, 1941), pp. 67-68; S. Deane, Diary, [May 16, 1775], *Letters*, Vol. I, p. 351; H. James Henderson, *Party Politics in the Continental Congress* (New York: McGraw-Hill, 1974), pp. 72-73. I disagree with Henderson's listing of the Rutledges as conservatives; by his definition, moderates is more appropriate. Clow, "Edward Rutledge," p. 72, so categorizes them.

[19]S. Deane, Diary, [May 24, 1775], *Letters*, Vol. I, p. 401; June 3, 1775, *Journals of the Continental Congress*, Vol. II, p. 80; Burnett, *Continental Congress*, p. 85.

pay for military supplies. A more serious issue arose from Parliament's passage of a Restraining Act which forbade nine colonies from trading with any country outside the British empire. Parliament exempted New York, Delaware, North Carolina, and Georgia from the prohibition in the belief that they disapproved of the Association. The law was obviously calculated to divide the colonies. In July, when Congress learned that Georgia had accepted the Association, Edward Rutledge rejoiced. Having failed to divide Americans, he wrote, Britain would be "forced to adopt wisdom and peace, as their only refuge." But Parliament's act did contribute to prolonged bickering in Congress. Radicals wanted to respond by opening American ports to ships of all nations in defiance of the Navigation Acts. That was too strong a step for moderates like the Rutledges, but the South Carolinians warned about dire consequences at home if a few colonies continued to export to foreign lands while South Carolina's trade was restrained by Britain. In the long debate that followed, John Rutledge spoke for strict adherence to the Association. American grievances would have been redressed, he claimed, if an earlier nonimportation had not been abandoned in 1770. He expressed surprise that not all of the four colonies exempted by Parliament had voluntarily placed themselves on the same footing as the others. He favored a resolution that they should cease exporting along with their sister colonies. Edward Rutledge spoke again for a total nonexportation until the next session of Congress. "Our People will go into Manufactures, which is a Source of Riches to a Country," he argued. Congress declined to open American ports in 1775; the Association remained in effect.[20]

The debate over trade and the necessity of waging an effective war raised the question of an American navy. Advocated by the New Englanders and southern radicals like Gadsden, the proposal met with opposition from conservatives who feared such an escalation would impede reconciliation. Some delegates, too, thought it impractical to build a fleet capable of accomplishing anything against Britain's mighty navy. Edward Rutledge opposed an American fleet, but on October 7 his brother supported the appointment of a committee to prepare a plan for a navy. John Rutledge said he was undecided on the issue. "I want to know how many Ships are to be built and what they will cost." Whatever his final decision may have been, Congress opted for a navy.[21]

[20]Henderson, *Party Politics*, pp. 57-58; Edward Rutledge to Philip Schuyler, July 29, 1775, Edward Rutledge Papers, South Caroliniana Library, University of South Carolina, Columbia, S.C.; Adams, notes of debates, Oct. 3 [4], 5, 12, 13, 20, 1775, *Letters*, Vol. II, pp. 106-109, 111, 168, 173-174, 215; Burnett, *Continental Congress*, p. 93.

[21]Henderson, *Party Politics*, pp. 58-59; Adams, Diary, Oct. 7, 1775, L. H. Butterfield, ed., *The Adams Papers, Series I: Diaries; Diary and Autobiography of John Adams*, Vol. II, (Cambridge, Mass.: Belknap Press of Harvard University Press, 1961), p. 198.

Congress was concerned not only with the means of resistance but with the governments that would direct it. As the colonial governments faded into irrelevance in most colonies, power was falling into the hands of ad hoc bodies like South Carolina's Provincial Congress. There was concern that these bodies were insufficiently stable and well-defined to preserve liberty and order; more regular governments were needed during the crisis. Radicals favored the creation of new governments as a step toward independence, which was a major objection in more conservative eyes.

The issue came before Congress on June 2, when the Massachusetts convention sought Congress's advice on establishing a government for the colony. John Adams argued that Congress should recommend that all the colonies establish new governments based on the authority of the people. Many years later he recalled that John Rutledge had been very pleased at this suggestion, but his memory was probably faulty on that point. Rutledge chaired the committee to consider Massachusetts's request. The result was a resolution of Congress that Massachusetts should choose an assembly and council according to its colonial charter. The two houses would run the colony until a royal governor consented to join with them in governing under the charter. Adams was disappointed with the result, which sought to provide an effective temporary government while preserving as nearly as possible the old colonial structure.[22]

Assuming that Rutledge approved of his committee's recommendation, he changed his mind by October because of the deepening crisis in South Carolina. The Provincial Congress prepared for war, established a Council of Safety to govern the colony between its sessions, and took steps to guard against a feared slave insurrection, a possible Indian attack, and rising backcountry Loyalism. In September 1775 the patriot authorities discovered that the royal governor, Lord William Campbell, had been corresponding with the Loyalists. Campbell, who had dissolved the last Commons House of Assembly on August 30, fled on September 15 to a British warship in Charleston Harbor. The Council of Safety reported his flight to their Congressional delegates and asked Congress's advice on a government for South Carolina.[23]

New Hampshire too requested guidance on government in October. Again John Rutledge chaired the committee that considered the request. John Adams later remembered that Rutledge "was now completely with Us, in our desire of revolutionizing all the Governments." Congress advised New Hampshire on November 3 to establish a government based

[22]June 3, 7, 9, 1775, *Journals of the Continental Congress*, Vol. II, pp. 79, 81, 83-84; Adams, Autobiography, *Letters*, Vol. I, p. 106n; Burnett, *Continental Congress*, pp. 71-74.

[23]Drayton, *Memoirs*, Vol. I, pp. 257-258, Vol. II, pp. 29-40; Clow, "Edward Rutledge," pp. 81-82.

on the people until the dispute with Britain was resolved. John Rutledge quickly requested and received the same advice for South Carolina.[24]

Rutledge and Henry Middleton then left Philadelphia to lay the resolution before the Second Provincial Congress. They arrived in Charleston too late for action on the resolution at its first session, but a new temporary government was on the agenda when the Provincial Congress met again in February 1776. John Rutledge helped design the constitution that was adopted in March, and he became South Carolina's first president. But that did not imply that he now supported independence. When Christopher Gadsden stunned the Provincial Congress by advocating independence, Rutledge found Gadsden's position treasonable and exclaimed that "he was willing to ride post, by day and night to Philadelphia, in order to assist, in re-uniting Great Britain and America."[25]

Rutledge wrote a lengthy preamble for the temporary constitution that recited at length American grievances against Britain, concentrating on British actions of the past two years. He called attention to American petitions for redress of grievances which had gone unanswered, giving the colonies no choice between resistance and slavery. But his preamble concluded that the new government was necessary only "until an accommodation of the unhappy differences between Great-Britain and America can be obtained (an event which, though traduced and treated as rebels, we still earnestly desire)."[26] The majority of the Provincial Congress concurred.

There was one note of ambiguity in the Provincial Congress's position, though. On March 23, three days after the preamble was adopted, the Congress authorized its delegates to the Continental Congress to agree to anything that the majority of Congress believed "necessary, for the defence, security, interest, or welfare of this colony in particular, and of America in general." By May this resolution reached Philadelphia, where it was generally viewed as an endorsement of independence. Certainly the resolution authorized South Carolina's delegates to agree to independence, but it is unlikely that the Provincial Congress intended to urge that course.[27]

If Congress got the impression that South Carolina favored independence, Edward Rutledge's role in that body in the first months of 1776 was

[24]Burnett, *Continental Congress*, pp. 122-123; Adams, Autobiography, *Adams Papers, Ser. I*, Vol. III, pp. 356-358; Oct. 26, 1775, *Journals of the Continental Congress*, Vol. III, p. 307.

[25]Drayton, *Memoirs*, Vol. II, pp. 172-173, 176; Joseph Johnson, *Traditions and Reminiscences, Chiefly of the American Revolution in the South . . .* (Charleston, S.C.: Walker and Jones, 1851), p. 41.

[26]Drayton, *Memoirs*, Vol. II, pp. 177-180; Ramsay, *History of South Carolina*, Vol. I, pp. 148-149; Mar. 26, 1776, *Extracts*, pp. 256-258; John Rutledge, original draft of preamble, Mar. 26, 1776, South Carolina Papers, South Caroliniana Library.

[27]Mar. 23, 1776, *Extracts*, p. 248; Burnett, *Continental Congress*, pp. 155-156.

partly responsible. After his brother left Philadelphia in November 1775, Edward Rutledge's position changed in response to events. By November 1775 the American army was invading Canada in the hope of adding that province to the union and removing a source of military danger to New England and New York. In the first half of November, moderates like Rutledge and conservatives were saddened to learn that the king would not consider Congress's petition for reconciliation. Worse, the British had "burned the town of Falmouth, Maine," and Virginia's governor, Lord Dunmore, had offered to free slaves who would fight for the king.[28]

Quite ill for a time in November 1775, Edward Rutledge was beginning to contemplate the possibility of independence. He had not yet given up on the prospect of reconciliation; indeed, he hoped that an American conquest of Canada would increase the chances of Britain conceding American rights in the long run. But, he told Thomas Bee, "the Cure" had to be "radical" when and if it came. As always, he was unwilling to make any concessions on colonial rights. "We have lived in so unsettled a Condition for such a length of Time that I would now wish to fight it fairly out and either establish a Connection consistent with the Principles of Liberty and placed on a permanent Basis, or have nothing more to do with them. The latter I think most likely to be the case." Rutledge saw no sign that Britain wanted peace, and he believed that the cruelties of war would before long turn Americans forever against the nation that was ravaging their land and people.[29] Dunmore's proclamation, he believed, would be more effective in promoting independence "than any other expedient, which could possibly have been thought of." Parliament must change its policy quickly or lose the colonies forever; a declaration of independence "seems to be not very far distant. . . ."

> Do they really imagine, that we . . . [will] submit to every Insult — to very Injury? Do they expect that after our Towns have been destroyed — our Liberties repeatedly invaded — our women and children, driven from their Habitations — our nearest Relatives sacrificed at the Altar of Tyranny, our Slaves emancipated for the express purpose of massacring their Masters — can they . . . expect that we shall return to our former connection with a forgiving, and cordial Disposition.

Rutledge admitted that he himself could not forgive or forget. Not that the prospect of independence was attractive to him; on the contrary, it would mean that "we must bid adieu, at least for a number of years, to Ease, and Happiness. We launch as it were into an unknown Ocean." But on the other

[28]Burnett, *Continental Congress*, p. 115; Clow, "Edward Rutledge," pp. 82-83.
[29]Edward Rutledge to Bee, Nov. 25, 1775, *Letters*, Vol. II, pp. 389-390.

hand, failure to declare independence "at a time when every Engine of Oppression is raised against us" would mean a weak executive power in charge of the war, little prospect of foreign assistance, and grave internal danger from "the Demon of Anarchy," all of which would increase the risk of defeat by Britain. Edward Rutledge had not made his decision for independence at the end of 1775, but clearly he was moving in that direction. He was much closer to accepting the necessity of independence than his brother John. One sign of his hardening attitude was his vote in December for an American navy, which he had earlier opposed.[30]

THERE WAS ONE RAY OF HOPE FOR A PEACEFUL SETTLEMENT IN January. Lord Drummond, a British nobleman, arrived in Philadelphia on his own personal peace mission. He claimed to have the private sanction of Lord North for generous terms that would give the colonies a very large measure of autonomy, but he said success would be more likely if the public offer of those terms came from Congress. Thomas Lynch, who opposed independence, thought Drummond's proposal gave America everything he wanted. Edward Rutledge was also among the delegates who met unofficially with Drummond, but his reaction was unrecorded. Congress was suspicious of Drummond's mission, and did not respond.[31]

Drummond's proposals did not prevent Edward Rutledge from taking a more radical stance in Congress by February 1776. On February 16 he spoke "vehemently" in favor of opening American ports to foreign trade, reversing the stand he had taken on that issue in October 1775. News received on February 26 that Parliament had passed the American Prohibitory Act, which prohibited all trade with America, put the rebellious colonies outside the protection of the crown, and authorized the seizure of American ships, increased support for Rutledge's new point of view. Despite that act, Rutledge on March 13 opposed a general authorization of privateering against British shipping. He was, however, willing to sanction it in some particular cases.[32]

On February 21, before word of the Prohibitory Act arrived, Edward Rutledge joined New England and Virginia radicals in speaking against a motion to thank Reverend William Smith for his oration in tribute to General Richard Montgomery, who had been slain at Quebec. The principal objection was that Smith "declared the Sentiments of the Congress to

[30]Edward Rutledge to Izard, Dec. 8, 1775, ibid., pp. 462-463; Clow, "Edward Rutledge," pp. 86-88.

[31]Burnett, *Continental Congress*, pp. 147-148; Thomas Lynch to George Washington, Jan. 16, 1776, and to Schuyler, Jan. 20, 1776, *Letters*, Vol. III, pp. 101-102, 125-126, 24-26 n. 1.

[32]Richard Smith, Diary, Feb. 16, Mar. 13, 1776, *Letters*, Vol. III, pp. 267, 375; Jensen, *Founding of a Nation*, p. 655.

continue in a Dependency on G. Britain, which Doctrine this Congress cannot now approve." The motion was withdrawn.[33] Apparently Edward Rutledge now supported independence.

Rutledge's actions through May were consistent with support for independence. When Congress on May 10 adopted a resolution recommending that all the colonies establish governments based on the people, Rutledge, John Adams, and Richard Henry Lee were appointed to write a suitable preamble. Lee and Rutledge asked Adams to write a draft. They agreed to the result, which stated that all authority under the crown should be eliminated. There was a hot debate over this language, which was generally viewed as equivalent to a declaration of independence. South Carolina's vote was crucial to the adoption of the preamble by the narrow margin of six colonies to four. John Adams considered the South Carolinians firmly on the side of independence.[34]

Some time during the next month, Edward Rutledge's thinking on independence underwent a puzzling change. The issue came to a head when the Virginia Convention on May 15 instructed its delegates to Congress to propose independence, a confederation of the thirteen states, and solicitation of foreign alliances. Richard Henry Lee introduced those resolutions in Congress on June 7. In the heated debate that followed, Rutledge joined with conservatives — "the Sensible part of the House," he now called them — to oppose a declaration of independence. In fact, he was one of the leading spokesmen for the negative, along with Robert R. Livingston, James Wilson, and John Dickinson.[35]

Thomas Jefferson summarized a position supposedly common to all of the leading opponents. They personally favored the resolutions, they said. The middle colonies, however, were not ready for independence. They were moving toward it, but a premature declaration of independence might lose them and break up the union. Congress should wait until popular demand all across America mandated a separation. That was doubtless the position of most opponents, but Edward Rutledge gave a different explanation of his own views in a letter written on June 8. He opposed a *declaration* of independence, not the idea of independence itself, for pragmatic tactical reasons.

Declaring independence at present, he argued, would simply give Britain "Notice of our Intentions before we had taken any Steps to execute

[33]Smith, Diary, Feb. 21, 1776, *Letters*, Vol. III, p. 294.

[34]Clow, "Edward Rutledge," pp. 102-103; May 10, 15, 1776, *Journals of the Continental Congress*, Vol. IV, pp. 342, 357; Adams, Autobiography, *Adams Papers, Ser. I*, Vol. III, p. 385.

[35]Burnett, *Continental Congress*, pp. 168, 171; Edward Rutledge to John Jay, [June 8, 1776], and Thomas Jefferson, notes of proceedings, *Letters*, Vol. IV, pp. 174-175, 160.

them." It would make America "ridiculous in the Eyes of foreign Powers by attempting to bring them into an Union with us before we had united with each other" in a confederation. "For daily experience evinces that the Inhabitants of every Colony consider themselves at Liberty to do as they please upon almost every occasion. And a Man must have the Impudence of a New Englander to propose in our present disjointed State any Treaty (honourable to us) to a Nation now at Peace."[36] Americans should first put their own house in order with a formal union and a real central government, then seek foreign aid on favorable terms, and finally declare independence after the preparations to sustain it had been made.

Rutledge told John Jay that he intended to move to postpone the resolution for independence "for 3 Weeks or a Month" while work on a confederation and a plan for alliances went on. Probably on his motion, Congress did postpone the issue of independence until July 1, appointing committees to draw up a declaration of independence, articles of confederation, and a scheme for treaties in the meantime. Rutledge himself was appointed to the committee of one delegate from each colony to prepare the confederation.[37] It is not clear why Edward Rutledge reversed his earlier view that independence must precede alliances and a new government. One good possibility is that the arrival of three new South Carolina delegates — Thomas Heyward, Arthur Middleton, and Thomas Lynch, Jr. — brought the news that independence was not popular at home. John Rutledge's continued opposition may have carried particular weight with his brother. Perhaps, too, the military situation at the time affected Rutledge's thinking. On May 18 Congress had received word of defeat in Canada. Rutledge served on a committee to confer with Washington and other generals about the dismal situation on that front, but Congress could only resolve to "contest every foot of the ground" and send reinforcements when possible.[38] By early June Rutledge also knew that a British army was at Cape Fear and Charleston was in danger. Faced with possible British conquest of his homeland, Rutledge may have reflected that it would be prudent to make the governmental and diplomatic arrangements needed for eventual victory before making an open commitment to the "treason" of independence.

Perhaps, too, an animosity toward the New Englanders who led the campaign for independence that appeared in Edward Rutledge's letters by

[36]Jefferson, notes of proceedings, and Edward Rutledge to Jay, [June 8, 1776], *Letters*, Vol. IV, pp. 160, 174-175.

[37]Edward Rutledge to Jay, [June 8, 1776], ibid., p. 175; Burnett, *Continental Congress*, p. 173; June 12, 1776, *Journals of the Continental Congress*, Vol. V, p. 433.

[38]Edward McCrady, *The History of South Carolina in the Revolution, 1775-1780* (New York: Macmillan, 1901), p. 173; Burnett, *Continental Congress*, p. 163; May 23-24, 1776, *Journals of the Continental Congress*, Vol. IV, pp. 383-384, 387-388.

June had something to do with his stand. After March 1776 personal animosities and recriminations increased in Congress; the delegates snapped at one another, especially on the subject of independence. Massachusetts delegates John and Samuel Adams, John Hancock, Robert Treat Paine, and Elbridge Gerry roomed at the same house with Rutledge. The outlook on life of men like the puritanical Adamses clashed with the assumptions of a South Carolina gentleman, and constant contact at close quarters bred friction. As noted, Rutledge remarked on June 8 that it required "the Impudence of a New Englander" to think that an advantageous alliance could then be negotiated. In August 1776, opposing the idea of outlawing duelling in the Continental Army, he remarked that "those louts" from New England might behave more like gentlemen if they lived by the *code duello.* By contrast, Rutledge was very friendly with aristocratic New Yorkers like John Jay and Robert Livingston who opposed independence.[39]

Rutledge's experience during June on the committee to draft articles of confederation reinforced his distaste for New Englanders and his doubts about independence. He was unhappy with John Dickinson's draft of the Confederation. Rutledge thought that Dickinson gave far too much power to the central government, which would ruin some colonies. "The Eastern Provinces" would control Congress.

> The Force of their Arms I hold exceedingly Cheap, but . . . I dread their overruling Influence in Council. I dread their low Cunning, and those levelling Principles which Men without Character and without Fortune in general Possess, which are so captivating to the lower Class of Mankind, and which will occasion such a fluctuation of Property as to introduce the greatest disorder. I am resolved to vest the Congress with no more Power than what is absolutely necessary . . . for I am confident if surrendered into the Hands of others a most pernicious use will be made of it.[40]

If independence and confederation would give New England commoners the power to ruin southern gentlemen, there was every reason for delay.

Rutledge's doubts remained unresolved when the resolution for independence again came up on July 1. Congress approved it in committee of

[39]Burnett, *Continental Congress,* p. 147; Adams, Diary, [Apr. ?, 1776], *Adams Papers, Ser. I,* Vol. II, pp. 237-238; Edward Rutledge to Jay, [June 8, 1776], *Letters,* Vol. IV, p. 175, and notes at Vol. V, p. xxiv; Robert M Weir, "'Liberty and Property, and No Stamps': The Stamp Act Crisis in South Carolina" (Ph.D. diss., Western Reserve University, 1966), pp. 72-73; S. Sidney Ulmer, "Some Eighteenth Century South Carolinians and the Duel," *South Carolina Historical Magazine* 60 (1959), pp. 1-2.

[40]Edward Rutledge to Jay, June 29, 1776, *Letters,* Vol. IV, p. 338.

the whole by a vote of nine colonies to two, with South Carolina and Pennsylvania opposed, Delaware divided, and New York abstaining. When the committee of the whole reported the resolution to the floor of the Congress, Edward Rutledge asked that the final vote be postponed until the next day. Though his colleagues opposed it, he explained, he thought they "would then join in it for the sake of unanimity." Rutledge's request was granted, and on July 2 South Carolina concurred in the unanimous vote of the colonies (New York still abstaining) for independence. A formal declaration of independence followed on July 4. Edward Rutledge in due course became the youngest signer of the historic document.[41] He did not oppose independence in principle, but circumstances and intercolonial jealousies at least temporarily dampened his enthusiasm for it.

NEWS OF THE DECLARATION ARRIVED IN CHARLESTON ON August 2. President John Rutledge and his council arranged a ceremony three days later at which independence was proclaimed to an approving crowd. By then the British attack on Charleston in June, its repulse, and the Cherokee War had done a lot to strengthen support for independence in South Carolina. Still, there were many who, like Henry Laurens, felt "a Tear of affection for the good old Country." John Rutledge was one of them. When the legislature met in September, he told the representatives that independence was "an event which necessity had rendered not only justifiable but inevitable." Though John Rutledge accepted independence, his words conveyed no enthusiasm for it. His simple statement contrasted with the assembly's reply expressing "unspeakable pleasure" at an "unsought for" but "unavoidable necessity" in which they rejoiced because it was the only security for liberty.[42]

From that time forward, John Rutledge devoted himself to achieving independence. It is not true, as has often been said, that Rutledge avowed his desire for reconciliation with England again in March 1778. The occasion of that supposed statement was the state legislature's adoption of a new constitution to replace the temporary constitution of 1776. President Rutledge on March 5 gave a famous speech to the legislators in which he

[41]Jefferson, notes of proceedings, July 1-2, 1776, Julian P. Boyd and Charles T. Cullen, eds., *The Papers of Thomas Jefferson*, Vol. I (Princeton, N.J.: Princeton University Press, 1950), p. 314; Clow, "Edward Rutledge," p. 119.

[42]H. Laurens to J. Laurens, Aug. 14, 1776, Henry Laurens Papers, South Carolina Historical Society, Charleston, S.C.; David Ramsay, *The History of the Revolution of South Carolina, from a British Province to an Independent State*, Vol. I. (Trenton, N.J.: Isaac Collins, 1785), pp. 174-175; Sept. 19, 20, 1776, William E. Hemphill, Wylma Anne Waites, and R. Nicholas Olsberg, eds., *Journals of the General Assembly and House of Representatives, 1776-1780* (Columbia: University of South Carolina Press for the South Carolina Department of Archives and History, 1970), pp. 63-64, 68.

vetoed the new constitution (which was being handled like any other law), gave his reasons for doing so, remarked that he did not expect to change the legislature's mind, and resigned as president.

Explaining his veto, John Rutledge, among other objections, refuted the claim that independence required a new constitution:

> The bill recites, "that the present [constitution] was temporary only, and suited to the situation of publick affairs when it was resolved on, looking forward to an accommodation with Great-Britain, an event then desired. But that the United Colonies have since been constituted independent states by the declaration of the honourable continental Congress, and it is therefore become absolutely necessary to frame a constitution suited to that great event." Admitting our form of government to be temporary, *it is to continue until that accommodation shall take place, until peace between Great-Britain and America shall be concluded,* though I do not hold that it must then be altered, and think it should not, unless a better can be devised. *We still look forward to such accommodation, an event as desirable now as it ever was* [emphasis added], so that the situation of publick affairs is in this respect the same as when the constitution was established; and though indeed, since the declaration of independence, the style of this country is somewhat altered, having been heretofore one of the United Colonies, and being now one of the United States of America; yet it exercised, and constitutionally, the same supreme power before as it has since that period. Such declaration therefore cannot make it necessary to change the form of government, nor can I conceive any reason which does.[43]

In this passage, John Rutledge was not claiming that an accommodation with Britain which would restore America to the British empire remained as desirable as South Carolinians had believed it was before 1776. His point was simply that independence did not require a new constitution. The 1776 constitution did indeed state that it was temporary, in effect until an accommodation with Britain took place. But after independence, Rutledge argued, "accommodation" meant a peace treaty between Britain and the United States. That peace treaty — that accommodation — remained desirable. Presumably it would recognize American independence. Until the war formally ended, there was no necessity of replacing the temporary 1776 constitution — and Rutledge did not admit that a new constitution would be necessary even then. His contemporaries understood Rutledge

[43]Ramsay, *History of Revolution of S.C.*, Vol. I, pp. 135-136. Italics added.

correctly. Had they believed that he still yearned for a return to the British empire, they would hardly have chosen him chief executive again a year later to lead the fight for independence when South Carolina faced its biggest military threat yet. Surely Christopher Gadsden, a political adversary of the Rutledges who saw himself as the living embodiment of classical public virtue and patriotism, would have made an issue of John Rutledge's continued opposition to independence if he had thought that was Rutledge's position. Instead, Gadsden complained "That the president has perverted our Sense (in my Opinion) of the Word 'Accommodation'." The word's context in the 1776 constitution, he maintained, "plainly and incontestably shews that... it refers to a *reconciliation* with G. B. and our becoming Subjects thereto again." To interpret the word differently, as Rutledge had done, was fallacious.[44]

John Rutledge, like his brother Edward, had made his decision for independence, despite whatever regrets and doubts and hesitations, in 1776. Once committed, neither of them wanted to turn back.

GENERATION AND GENDER AS REFLECTED IN CAROLINA SLAVE NAMING PRACTICES: A CHALLENGE TO THE GUTMAN THESIS

JOHN C. INSCOE*

THE 1976 PUBLICATION OF HERBERT GUTMAN'S *THE BLACK Family in Slavery and Freedom, 1750-1925* was a historiographical landmark.[1] It appeared in a decade which saw an extraordinary reformulation of the slave experience, from John Blassingame's *The Slave Community* in 1972 to Eugene Genovese's *Roll, Jordan, Roll* and Robert Fogel and Stanley Engerman's *Time on the Cross*, both published in 1974.[2] In a sense, Gutman's book represented a culmination of the themes developed in those works just preceding it. For, through various means and with varying degrees of emphasis, each sought to present slaves as vital and active determinants of their own lives and culture, and not as merely the passive victims depicted by earlier, primarily pre-civil-rights-era historians. Gutman's contribution to this new realization of African-American cultural autonomy was to focus on a single, central aspect of slave lives, their family structure. He refuted the widespread belief that "the peculiar institution" severely hampered the development of traditional family patterns among slaves and that slave families were predominantly matriarchal in structure. Through an impressive blend of anthropological and cliometric methodology, he demonstrated that slaves were able to overcome the plantation regime's restrictions to such a degree that they established and maintained viable and relatively stable family lives, with two-parent households and lengthy slave marriages more the norm than the exception.

Among the more innovative means by which Gutman supported this contention was an analysis of slave naming practices and patterns, which he saw "as clues to the significance slaves attached to the enlarged kinship group."[3] More specifically, he based his argument largely on the extensive practice of patrilineal naming as revealed primarily in the records of four

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[1]Herbert G. Gutman, *The Black Family in Slavery and Freedom, 1750-1925* (New York: Pantheon Books, 1976).

[2]John W. Blassingame, *The Slave Community: Plantation Life in the Antebellum South* (New York: Oxford University Press, 1972); Eugene D. Genovese, *Roll, Jordan, Roll: The World the Slaves Made* (New York: Random House, 1974); and Robert W. Fogel and Stanley Engerman, *Time on the Cross: The Economics of American Negro Slavery*, 2 vols. (Boston: Little Brown & Co., 1974).

[3]Gutman, *Black Family*, p. xxiii.