STUDY GUIDE

IS THE NATIONAL ANTHEM RACIST?

KEY TERMS: pragmatist, federal republic, self-made, administrator, abolitionist, hero

NOTE-TAKING COLUMN: *Complete this section <u>during</u> the video. Include definitions and key terms.*	**CUE COLUMN:** *Complete this section <u>after</u> the video.*
"The Star-Spangled Banner" was written after the composer witnessed which battle in the War of 1812?	Why do some people think that the American national anthem is racist?
"Hirelings and slaves" was an all-purpose insult at the time that could be used to refer to whom?	What evidence substantiates that the American national anthem is *not* racist?
What song did Martin Luther King Jr. and his supporters sing at the statehouse when they reached the end of their famous Selma march?	

DISCUSSION & REVIEW QUESTIONS:

- Towards the beginning of the video, Dr. Robbins points out that, "...Jason Johnson, journalism professor at Morgan State University, and popular cable news commentator, wrote about the anthem: 'It is one of the most racist, pro-slavery, anti-black songs in the American lexicon...' Is Johnson serious? Actually, he is. And sadly, a lot of Progressives agree with him." Why do you think that Professor Johnson and other Progressives mistakenly believe that the American national anthem is racist? In what way do you think that Progressives scorning the American national anthem as racist fits into their anti-America agenda? Explain.

- Later in the video, Dr. Robbins notes that, "Here's what Keys wrote: 'No refuge could save the hireling and slave, from the terror of flight, or the gloom of the grave.' The claim of racism focuses, of course, on Key's use of the word 'slave,' which, so the argument goes, refers to the British Second Corps of Colonial Marines. This unit was composed of former American slaves who had been encouraged to escape bondage and fight alongside British troops. According to this line of thinking, the slave-owning Key, a prominent attorney, was terribly upset by the idea of freed blacks fighting against their former masters and was so gratified by their defeat that he inserted this line into his poem." Considering that the British Second Corps of Colonial Marines wasn't present in the battle that Key witnessed, that Key may not have even been aware of their existence, that Key offered free legal services to slaves, and that the expression 'hireling and slave' could refer at the time to many people, including free white people, as an insult, why do you think that some people still attempt to argue that Key's work was racist- even though there isn't any valid evidence for such a claim? Why do you think that Progressives so often use infantile reasoning, narrow thinking, and unsubstantiated, out-of-context references to make claims and arguments? Explain.

- Dr. Robbins goes on to ask, "Why then did Key use the word 'slave?' We'll never know for sure, of course, but it's important to note that Key was not the first person to use the expression 'hirelings and slaves.' It was a common rhetorical device of the time used on both sides of the Atlantic. ...And remember, 'slave' was a convenient rhyme for 'grave.' Key was, after all, writing a poem. It may be as simple as that." Considering that professional historians don't even know why Key used the term 'slave' in the poem, why do you think that Progressives are so sure that they know and are certain that it was racist in nature? Explain. Why do you think that Key used that particular phrase? Explain.

- Later in the video, Dr. Robbins notes that, "Before the recent ruckus, no one who sang the National Anthem thought it sent a racial message. If anything, people believed that the anthem promoted unity, as it was intended to do." Why do you think it is the case that for so long Americans did not think of their national anthem as being racist? Do you believe that the poem and song were intended to promote unity? Why or why not?

- At the end of the video, Dr. Robbins concludes that, "Those who declare the flag and the National Anthem to be racist would do well to remember that Martin Luther King, Jr. and his supporters carried the American flag during their famous Selma march. When they reached the statehouse in Montgomery, Alabama, guess what song they sang? That's right. 'The Star-Spangled Banner.'" Why do you think that Dr. King and his supporters sang the national anthem at the end of their march? Explain. Do you think that the fact that Dr. King and the other Black Rights supporters sang the national anthem is strong proof that the national anthem is not racist? Why or why not?

EXTEND THE LEARNING:

CASE STUDY: The Antelope

INSTRUCTIONS: Read the article "'By the law of nature, all men are free': Francis Scott Key and the case of the slave ship Antelope," then answer the questions that follow.

- What was the case of the Antelope about? Who had worked to bring the case before the U.S. Supreme Court? Who was John Berrien, and whom did Mr. Berrien represent? What was Mr. Key known for at the time? Who was Mr. Key representing? What were Mr. Key's main arguments in the case? What was at stake for Mr. Berrien and his client? What was Mr. Berrien's experience arguing before the Supreme Court compared to that of Mr. Key and the U.S. Attorney General? What did Mr. Berrien argue, in terms of the U.S. Constitution, the law, and slavery? What did the 1819 Slave Trade Act do? The author of the article writes that, "The conflict over freedom for the captives [from the Antelope] forced the Supreme Court to address a number of important questions." What were those questions? How did Mr. Berrien close his case? What did the court rule in the end?

- Why do you think that Mr. Key placed his reputation on the line to defend the slaves from a slave ship? Do you think that Mr. Key made compelling arguments in the case of the Antelope? Why or why not? What do you think was Mr. Key's strongest argument in the case? Explain. Why do you think that Mr. Key lost?

- Francis Scott Key freed slaves that he inherited from his parents. He offered free legal services to slaves. He saved Arthur Bowen, a slave, from a lynch mob. He advocated for the slaves of the Antelope. He was a founder of the American Colonization Society- a group that attempted to help slaves by purchasing them and giving them safe passage to Africa. He helped to establish and he taught at the Georgetown Lancaster School- a school for free colored children, whereby over a thousand black children attended… mostly tuition-free. Does this sound like a racist to you? Explain.

- Considering that Progressives tend to like revisionist history and tend to like just eliminating things that they consider offensive and/or hateful, such as confederate statues in the South, do you find the fact that Progressives are bringing so much attention to and are making such a big deal out of the supposedly offending verse that no one sings in the American national anthem to be hypocritical? Why or why not?

QUIZ

IS THE NATIONAL ANTHEM RACIST?

1. "The Star-Spangled Banner" was composed by _____.

a. John Phillip Sousa
b. Scott Joplin
c. Francis Scott Key
d. Sanford A. Moeller

2. "The Star-Spangled Banner" was written after the composer witnessed which battle in the War of 1812?

a. Battle of Queenston Heights
b. Battle of Fort McHenry
c. Battle of Stonington
d. Battle of Fort George

3. Although a slave owner himself, the composer of the national anthem was a prominent attorney that offered free legal representation to slaves petitioning the Maryland court for their freedom.

a. True
b. False

4. "Hirelings and slaves" was a common rhetorical device of the time and an all-purpose insult that could be used to refer to _____.

a. enemy troops
b. foreign leaders
c. corrupt politicians
d. all of the above

5. What song did Martin Luther King Jr. and his supporters sing at the statehouse when they reached the end of their famous Selma march?

a. "Say it Loud, I'm Black and I'm Proud"
b. "Yankee Doodle Dandy"
c. "The Star-Spangled Banner"
d. "Georgia"

QUIZ - ANSWER KEY

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https://www.salon.com/2015/07/11/%E2%80%9Cby_the_law_of_nature_all_men_are_free%E2%80%9D_francis_scott_key_and_the_case_of_the_slave_ship_antelope/

“By the law of nature, all men are free”: Francis Scott Key and the case of the slave ship Antelope

With the Antelope case, the Supreme Court established precedents that would hold for 35 years: Slaves were property

Jonathan M. Bryant

July 11, 2015 7:59PM (UTC)

Excerpted from "Dark Places of the Earth: The Voyage of the Slave Ship Antelope"

“The Africans are parties to the cause,
at least such of them as are free.”

Attorney General William Wirt *The Antelope*, 23 U.S. 66, 106 (1825)

On the morning of February 28, 1825, attorney John Macpherson Berrien prepared to open his case. This was the second of what would be five days of argument before the United States Supreme Court, and Berrien faced a formidable challenge. Just two days earlier, on Saturday, Francis Scott Key had opened for the federal government in the case of the *Antelope*. Key had not yet been relegated to textbooks as the pious author of “The Star-Spangled Banner.” In 1825 he was a lawyer at his peak: rich, well connected, and influential. He was also a superb speaker—some put him on par with Daniel Webster. Key had unleashed all of his rhetorical weapons on Saturday; this was a case he believed in and had worked personally to bring before the Supreme Court. The *Antelope* was a Spanish slave ship that had been captured by privateers and then seized by a United States Revenue Marine cutter off the coast of Florida. Using clear precedent, poetic language, and appeals to morality, Francis Scott Key argued that the hundreds of African captives found aboard the *Antelope* should be returned to Africa and freedom. United States law demanded it, he said. The law of nations demanded it, he said. Even the law of nature demanded it. Key looked into the eyes of the six justices sitting for the case, four of whom were slave owners, and announced that “by the law of nature, all men are free.”

The dim Supreme Court chamber in the basement of the Capitol was packed, and many spectators were impressed by Key’s argument. Henry S. Foote wrote that Key “greatly surpassed the expectations of his most admiring friends. . . . [and] he closed with a thrilling and even electrifying picture of the horrors connected with the African slave trade.” Most startling of all, Key argued that assuming all Africans were slaves, while declaring that all men were created equal, was philosophical and constitutional hypocrisy. If the United States had captured a ship full of white captives, Key asked, would not our courts assume them to be free? How could it be any different simply because the captives were black? Key knew that such disputes over slavery, race, and the meaning of the Constitution were not new, but in the 1820s, they’d

begun to divide the nation. Just a few years earlier, from 1819 to 1821, conflict over the expansion of slavery into Missouri had torn Congress, and almost the nation, apart. Slavery was a dangerously hot subject, but Francis Scott Key stepped deliberately into the fire.

The city of Washington had all of Sunday to discuss and consider Key's argument. On Monday morning there was great anticipation surrounding John M. Berrien's rebuttal. Again the Supreme Court chamber was crowded, and Berrien knew that the spectators expected fireworks. He was a newly elected United States senator from Georgia and wanted to make a strong impression, but fireworks were not his style. Berrien was a man who focused on logic and details, on clear and forceful argumentation. His command of the details of the case was unrivaled, since he had been involved with it from the beginning: so involved, in fact, that he and several friends had substantial financial interest in the outcome. There were professional implications as well; his client was Santiago de la Cuesta y Manzanal, a Spanish nobleman living in Cuba. A ruthless, wealthy, and powerful man, Santiago de la Cuesta stood to lose as much as $100,000 if Berrien failed. By comparison, the annual salary of a Supreme Court justice in 1825 was $4,500. A fortune was at stake, as was John Macpherson Berrien's rising reputation.

Berrien was a highly respected attorney and judge in Georgia, but his work at home was service in the far provinces in comparison to pleading before the Supreme Court. Not that this was his first time; he had argued before the Supreme Court seven years before. Francis Scott Key, in contrast, had argued before the Court every year for the past seventeen years, a total of forty-two cases thus far. U.S. Attorney General William Wirt, Key's co-counsel, had appeared before the Court more than seventy times by 1825. In experience alone Berrien's adversaries were overwhelming, and they also looked the part. Key "was tall, erect, and of admirable physical proportions." Wirt was also tall, broad-chested, and graceful, with piercing blue eyes. Berrien was none of those, and he had a big nose to boot. Berrien also lacked the poetics and the gracious behavior of Francis Scott Key. While a polished and devastating debater, Berrien had a bitter and sometimes cruel wit that emerged even when he fought to control it. He had to restrain himself; one scored points before the Supreme Court with logic and the law, not with clever quips. The hour came; Berrien stood and began his argument.

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Slavery and the slave trade had haunted the United States from its beginning, and in 1775, every North American colony was entangled in the system. Many of the Revolutionary generation believed that rebellion against Great Britain included rebellion against the colonial system of slavery. The preamble to the Declaration of Independence asserted inalienable rights of life, liberty, and the pursuit of happiness. Slavery was clearly antithetical to these rights. Thomas Jefferson had gone further in his draft of the Declaration, which famously included a powerful complaint against the king that was struck from the final document. The king, Jefferson wrote:

has waged cruel war against human nature itself, violating its most sacred rights of life & liberty in the persons of a distant people who never offended him, captivating & carrying them into slavery in another hemisphere, or to incur miserable death in their transportation thither. This piratical warfare, the opprobrium of infidel powers, is the warfare of the CHRISTIAN king of Great Britain. Determined to keep open a market where MEN should be bought & sold, . . .

As part of their resistance to Great Britain, the revolutionary states ended their participation in the African slave trade, even as they condemned British offers of freedom to slaves who enlisted to fight for the king. This reflected a developing tension in the new nation, as Americans struggled to accommodate slavery in a society asserting equality for all. The tension was especially apparent at the 1787 Constitutional Convention in Philadelphia, where conflicts arose over taxation, representation, and, inevitably, slavery. James Madison reported in his notes on the convention that compromise after compromise followed, until a final document was hammered out in September 1787. Slavery was never mentioned by name in the final version, but the Constitution engaged the issue. As John Quincy Adams explained, in the famous *Amistad*

case, “The words slave and slavery are studiously excluded from the Constitution. Circumlocutions are the fig-leaves under which these parts of the body politic are decently concealed.”

The new system of government counted three-fifths of slaves for purposes of representation and taxation; required the return of fugitive slaves; and, most directly of all, prohibited any regulation of the Atlantic slave trade by the federal government until January 1, 1808. Southern planters, especially in Georgia and South Carolina, had lost tens of thousands of slaves during the Revolution. They insisted upon a chance to rebuild their stock of slaves through the direct African slave trade. Twenty years was the compromise with regard to how long direct trade would be allowed; most delegates assumed that after twenty years, the international slave trade would end. Delegates, however, also generally agreed that the new Constitution gave the federal government no power to regulate or control slavery in the states. This fit the federalist conception of the new government; it had power over international commerce, including the slave trade, but no power over domestic institutions within the states themselves. In a seemingly unconnected area, the Constitution also gave the federal judiciary control of “all Cases of admiralty and maritime Jurisdiction.” Federal courts, not state courts, would enforce any future federal laws respecting the seaborne slave trade.

Americans of the Revolutionary generation were torn by the issue of slavery. While many decried it, slavery seemed inescapably integrated into American society. Thomas Jefferson explained this terrible dilemma in a letter to John Holmes in April of 1820, writing, “but, as it is, we have the wolf by the ear, and we can neither hold him, nor safely let him go.” Several states adopted plans for emancipation, but these were very gradual plans lasting decades, and were adopted in states where slavery was not central to the economy. There were others, however, who saw slavery not just as the cost of union but as a force maintaining union. Following this line of reasoning, in the *Antelope* case John Macpherson Berrien argued before the Supreme Court concerning slaves:

The principle by which you continue to enjoy them, is protected by that constitution, forms a basis for your representatives, is infused into your laws, and mingles itself with all the sources of authority. . . . Paradoxical as it may appear, they [slaves] constitute the very bond of your union. The shield of your constitution protects them from your touch.

The slave trade, however, was understood as being different from slavery. It was a commercial practice, not a domestic institution, and so could be regulated and controlled by rational individuals. Its horrors and abuses were well known, and educated citizens condemned it in public. By 1798, every American state had outlawed the international slave trade, though South Carolina reopened it in 1803. In December of 1806, President Thomas Jefferson called upon the United States Congress for a law prohibiting the international slave trade at the earliest time allowed by the Constitution. By the end of February 1807, Congress had sent An Act to Prohibit the Importation of Slaves to the president for his signature. This law made it illegal for Americans to participate in the international slave trade, and illegal for anyone to import slaves into the United States after January 1, 1808. At almost the same time in Great Britain, in March 1807, after more than two decades of political struggle by abolitionists, Parliament passed An Act for the Abolition of the Slave Trade. Under this law, British participation in any aspect of the slave trade was unlawful, as was the importation of slaves to any British possessions after May 1, 1807.

It was one thing to outlaw the international slave trade; it was something else to put that law into effect. In 1808, the United States had little in the way of a meaningful navy, and did no more than try to control ships bringing slaves to American shores. Great Britain, engaged in a titanic war with Napoleon’s France, went much further and empowered its vast navy to suppress the slave trade. The impact of the laws and British action was immediate. From 1800 through 1807, documented voyages delivered almost 80,000 slaves to the Americas each year. In 1807, the number of slaves from documented voyages arriving in the New World totaled 86,343. In 1808, that fell to less than 33,000, and in 1809, less than 31,000. Clearly law and the British assumption of a wartime power to stop and search any vessel on the high seas had a significant effect upon the extent of the international slave trade, even when only one nation was engaged in the effort.

Despite these successes, the slave trade continued. The vibrant and growing plantations of Spanish Cuba and Brazil demanded more enslaved workers, and slavers in Africa continued to offer captives at prices that kept the slave traders' profits high. With the end of the Napoleonic Wars in 1815, the number of slaving voyages and slaves delivered to the Americas began to rise significantly. Slavers learned to use the flags of various nations to protect their ships, especially those of Spain, Portugal, and, increasingly, the United States. British reluctance to stop and search American ships after 1815 conferred significant immunity upon vessels flying the American flag legitimately or illegitimately. Much of the financing for these voyages also came from the United States. This was especially true for slaving voyages to Cuba. Finally, many American citizens were involved as sailors and officers in these ventures.

Partly in response to these and other political issues, in March 1819, Congress passed An Act in Addition to the Acts to Prohibit the Importation of Slaves. This law increased the penalties for Americans engaged in the international slave trade, and for the first time provided money to support implementation of the law. Most importantly for the case of the *Antelope*, the 1819 Slave Trade Act provided that captives brought into the United States illegally would come under the authority of the president of the United States. The president would then arrange as soon as possible to return the captives to Africa. Congress also revised American piracy law in May of 1820. Americans engaged in the slave trade were deemed pirates and, as such, were subject to the death penalty. At a time when the United States was torn over the admission of Missouri as a slave state, and divided on the issue of the westward expansion of slavery, the congressional votes on the 1819 Slave Trade Act and the 1820 Piracy Act suggested a significant commitment to strong laws for suppression of the international slave trade.

The arrival of the *Antelope* tested that commitment. The ship was a Spanish slaver from Cuba, captured off the coast of Africa by a revolutionary privateer. An American revenue cutter later captured the *Antelope* off the coast of Spanish Florida. Found aboard were 281 living captives. The seven years of legal conflict over the captives that followed revealed much of the dark underside of law and commerce in the young Republic. The conflict over freedom for the captives forced the Supreme Court to address a number of important questions. Were the natural rights of liberty more important than the rights of property? Was the Constitution a source of first principles for the American legal system, or simply a legal text providing only limited powers? How was international law shaped, and what role did it have in American law? Did African captives have the same rights as other human beings in the American legal system, or did race limit their rights before the courts? Most importantly, the case forced the Supreme Court to the very precipice on the issue of slavery. If natural rights to liberty made the *Antelope* captives free, did natural rights make all slaves free?

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The *Antelope* is not commonly considered an important Supreme Court case. It is long — more than seventeen thousand words, and complex. It was an admiralty law case, with arcane procedures and different rules of evidence than those of common law. It did not boldly highlight a groundbreaking change in the powers of federal governance. In many ways the case has simply been overlooked. If asked about important Supreme Court cases on slavery, most historians would name Dred Scott, or perhaps Prigg v. Pennsylvania. Thanks to Steven Spielberg, members of the public would most likely mention the *Amistad*. The *Antelope* is crucial, however, because in it Chief Justice John Marshall and the Supreme Court established precedents—in international law, property law, and the Court's cognizance of natural rights—that influenced future decisions on slavery. As Marshall explained early in his *Antelope* opinion:

In examining claims of this momentous importance; claims in which the sacred rights of liberty and of property come in conflict with each other; . . . this Court must not yield to feelings which might seduce it from the path of duty, and must obey the mandate of the law.

By refusing to be "seduced" from the path of duty and by affirming that while slaves might be human beings, at law slaves were property, John Marshall's Court shaped American jurisprudence on these issues for the next thirty-five years. The Court also buttressed the claims of slave owners in looming struggles

over fugitive slaves and the westward expansion of slavery. Whether or not the Constitution is a pro-slavery document is much debated among historians, but without question it is a pro-property document. If slaves are property, and nothing else, then a pro-property Constitution will inevitably be pro-slavery. Thus, in many ways John Marshall's opinion in the *Antelope* reinforced the divisions that would tear the nation apart.

John Macpherson Berrien could not see the future, but as a plantation master he understood the importance of slaves remaining property at law. He began his argument by summarizing Key's address, and then highlighted the implications. If the Court accepted Key's assertions, Berrien argued, then "we are bound, prima facie, to hold that there can be no property in a human being." He let that hang for a moment. Then he moved to the logical destruction of Key's presentation, ticking off point by point from a numbered list. Berrien mocked Key's ethical arguments, asking, "[W]ould it become the United States to assume . . . the character of censors of the morals of the world . . . ?" He continued, "We have no pretense, then, to enforce against others our own peculiar notions of morality. The standard of morality, by which Courts of justice must be guided, is that which the law prescribes." Berrien's presentation was masterful, biting, sardonic, and brilliant. Unfortunately for the *Antelope* captives, and for the nation, several justices found it convincing.