

Was the Constitution pro-Slavery? The Changing View of Frederick Douglass

Robert Cohen

During the crisis of the union that unfolded in America in the nineteenth century and culminated with the Civil War, a debate raged over whether the Constitution was a pro-slavery document. At first glance, this might not seem a debatable subject. After all, key abolitionist figures, such as William Lloyd Garrison, who disagreed vigorously with slave-owners on virtually every aspect of the slave system did agree with them on one thing: that the Constitution supported slavery. It was the Constitution's protections of slavery, most notably the three-fifths clause, the Fugitive Slave clause and the provision preserving the slave trade for 20 years (see the box on p. 247) that enabled the most vehemently pro-slavery representatives to the Constitutional Convention from South Carolina and Georgia to endorse the Constitution.

Those same provisions led Garrison to denounce the Constitution as “a covenant with death and an agreement with hell,” which “compromises with [the] tyranny” of the slaveholder. Garrison dramatized this scathing indictment by publicly burning a copy of the Constitution in 1854.¹ The Supreme Court's *Dred Scott* decision of 1857, which upheld the right of slave owners to maintain possession of their slaves even in states where slavery was illegal, also seemed to support the contention that the Constitution was pro-slavery.

When we dig deeper, however, into the history of slavery, anti-slavery, and the Constitution, it is clear that the pro-slavery implications of the Constitution are a matter for debate. The debate was played out most notably in the case of Frederick Douglass, the pre-eminent African American protest leader in the antebellum period. Douglass had escaped from slavery in Maryland in 1838, and within a few years emerged as a tower-

ing figure in the abolitionist movement: one of its leading orators, authors, and newspaper editors.

The Initial Interpretation

On the question of the Constitution and slavery, Douglass began his abolitionist career—and went through much of the 1840s—holding the same position as Garrison, his early mentor in that movement. Even as late as 1850, Douglass, in his abolitionist newspaper, *The North Star*, condemned the founding fathers for having “cunningly wrought into” the Constitution “the pro-slavery principle.” Douglass argued that the Constitution's rhetoric about liberty was belied by its pro-slavery provisions:

Liberty and Slavery—opposite as Heaven and Hell—are both in the Constitution; and the oath to support the latter, is an oath to perform that which God has made impossible. The man that

swears support to it vows allegiance to two masters—so opposite, that fidelity to one is, necessarily treachery to the other. If we adopt the preamble with Liberty and Justice, we must repudiate the enacting clauses, with Kidnapping and Slaveholding.²

By protecting slavery, the Constitution was, in Douglass's words “supporting and perpetuating this monstrous system of injustice and blood.”³

Douglass, with his flair for stirring oratory and writing, gave voice to this scorching abolitionist indictment of the Constitution in a series of memorable speeches and editorials. One of his most powerful critical statements on the Constitution and slavery was made in England, where he fled and stayed for more than a year after the publication of his autobiography, *Narrative of the Life of Frederick Douglass, An American Slave*, in 1845, because he lived in fear that his fame in the United States made him, as a fugitive slave, vulnerable to being kidnapped and returned to slavery in Maryland.⁴ Douglass condemned the Fugitive Slave “clause of the American constitution” for giving

to the slaveholder the right at any moment to set his well-trained

continued on page 248

Articles of the Constitution Cited as Evidence of its Support for Slavery

Three-fifths clause (Article 1, section 2)

Representatives and direct taxes shall be apportioned among the several states which may be included within this union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other Persons.

Provision for the suppression of insurrections (Article 1, section 8)

The Congress shall have power.... To provide for calling forth the militia to execute the laws of the union, suppress insurrections and repel invasions;

Provision preserving the slave trade for 20 years (Article 1, section 9)

The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

Fugitive Slave clause (Article 4, section 2)

No person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

Clause offering protection against "domestic violence" (Article 4, section 4)

The United States shall guarantee to every state in this union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence.

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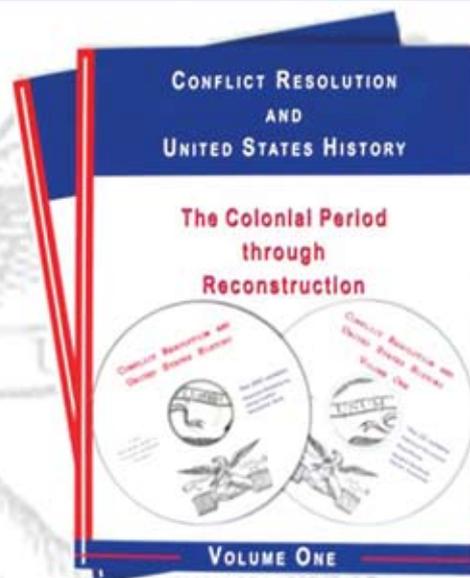
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bloodhounds upon the track of the poor fugitive; hunt him down like a wild beast, and hurl him back to the jaws of slavery from which he had, for a brief space of time, escaped. This clause of the constitution consecrates every rood of earth in that land over which the star-spangled banner waves as a slave-hunting ground.⁵

Douglas argued that “were it not for the ... protection afforded” to slavery by this constitution” many more slaves “would run away,” as he had done. “They do not love their masters so well as the tyrants sometimes flatter themselves; they do frequently run away.” Reminding the London audience of his own escape from slavery, Douglass pointed to his presence as evidence of the slaves’ “disposition to run away,” a line that drew thunderous applause.⁶

Douglass also denounced the articles of the Constitution that authorized U.S. armed forces to protect slavery against slave rebellions by giving the president and Congress the power to “suppress insurrections” and stop “domestic violence.” Thus, Douglass said, “The constitution ... converts every white American into an enemy to the black man in that land of professed liberty. Every bayonet, sword, musket, and cannon has its deadly aim at the bosom of the Negro: 3,000,000 of the coloured race are lying there under the heels of 17,000,000 of their white fellow creatures.”⁷

At this time, Douglass’s approach to the American Revolution and Constitution was characterized by profound alienation. He condemned as hypocritical the Constitution preamble’s lines about securing “the blessings of liberty to ourselves and posterity.” In Douglass’s eyes the founders lied about slavery by “wrapping it” and the sins of the slaveholding republic “in honeyed words.... The identical men who ... framed the ... constitution were trafficking in the blood and souls of their fellow men.” By speaking the language of liberty in a Constitution that actually safeguarded racial slavery

the founders had, in Douglass’s words, insured that “the whole system, the entire network of American society” would be “one great falsehood from beginning to end,” tyranny masking itself as democracy.⁸

Douglass’s Change of Mind

The most powerful rebuttal to Frederick Douglass’s depiction of the Constitution as a pro-slavery document would come from Douglass himself, later on, as he grew more independent of Garrison, and finally broke with his former mentor’s indictment of the Constitution. In 1851, after an ongoing dialogue with New York abolitionist Gerrit Smith, Douglass came to agree with Smith that the Constitution actually had anti-slavery implications.⁹ Douglass contended that those who claimed the Constitution was a pro-slavery document were misreading it. He saw the Constitution as having “noble purposes,” which were “avowed in its preamble” whose words about liberty rendered it an “instrument” that could be “wielded in behalf of emancipation.”¹⁰

Douglass’s turnaround on the Constitution was connected to his growing belief that the Garrisonian position on the politics of anti-slavery was impractical. Garrison had taken the moralistic stance that abolitionists ought not to vote or in any way participate in a political process that had been corrupted by the slave system and its pro-slavery Constitution. Instead, Garrison advocated the use of moral suasion and the secession of the northern states from the Union. The flaw in this position was that though it might protect the North

from the immoral influence of slavery, it offered little in the way of effective steps to end slavery in the South. Douglass came to see what historian James Oakes, in his recent book on Douglass, Lincoln, and anti-slavery politics, has termed the discrepancy “in Garrisonian abolitionism between its histrionic rhetoric and its remarkably passive plan of action” for ending slavery.¹¹ (In the article following this one, Oakes shares his own reflections on the relationship between slavery and the Constitution.) Thus, by re-casting the



John Chester Buttre, engraver (1821-1893)/The Schomburg Center for Research in Black Culture, New York Public Library, Astor, Lenox and Tilden Foundations.

Constitution as anti-slavery, Douglass could justify embracing the idea of voting and aligning abolitionists with those in the American electoral system who were critics of slavery and slave expansion, first in the Liberty Party and then in the Free Soil and Republican parties. This offered the prospect of using the vote to prevent the expansion of slavery westward and then to abolish the “peculiar institution” entirely.

As part of his new mode of argument, Douglass adopted a very literal mode of interpreting the Constitution. He held that the Constitution meant what it said and said what it meant: Claims about slavery’s constitutionality ought not to be accepted unless backed by plain lan-

guage in the Constitution. Here Douglass took advantage of the founders' most notable silence, that the Constitution they wrote never mentioned the word "slavery." Douglass saw this silence as evidence that the founders did not want the central document of the new republic to legitimize slavery by explicitly recognizing it. James Madison's notes from the convention confirm that this refusal to name slavery derived from an anti-slavery sensibility, that some delegates "thought it wrong to admit in the Constitution the idea that there could be property in men."¹²

For Douglass, the preamble occupied a central place in his anti-slavery reading of the Constitution. Douglass, in his 1860 speech on "The Constitution and Slavery," invited readers to inspect the Constitution's preamble to "look at the objects for which the Constitution was framed and adopted and see if slavery is one of them." Douglass recited the preamble:

We the people of these United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

Douglass expressed support for all six goals of the preamble—"union, defence, welfare, tranquility, justice, and liberty"—and he noted that "slavery so far from being among them, is a foe of them all."¹³ To slaveholders who claimed that the founders did not mean for the Constitution's phrases about liberty to apply to African Americans, Douglass responded that they needed to read the preamble:

Its language is "we the people"; not we the white people, not even we the citizens, not we the privileged class, not we the high, not

we the low, but we the people; not we the horses, sheep, and swine, and wheel-barrow, but we the people; and if Negroes are people, they are included in the benefits for which the Constitution of the United States of America was ordained and established.¹⁴

Critics might dismiss this multi-racial reading of the preamble because the all-white Constitutional Convention included and compromised with slave-owners. However, Justice Benjamin Robbins Curtis's dissenting opinion in the *Dred Scott* decision supports Douglass's interpretation. Justice Curtis argued that the liberties ordained for "We the people," included free blacks, most notably residents of New York, New Jersey, North Carolina, New Hampshire, and Massachusetts who, "though descended from African slaves" were not merely citizens but voters in the Constitution's ratification process.¹⁵

Douglass also reversed his earlier interpretation of the Constitution's articles empowering the federal government to "suppress insurrections" and "domestic violence." Since neither of these articles mentioned slavery, Douglass now argued that the only reason they became a license to suppress slave rebellions was because pro-slavery presidents distorted their meaning. He envisaged a Lincolnesque leader using the power of the presidency, his constitutional authority, to suppress insurrection, as a license for abolitionism:

If it should turn out that slavery is a source of insurrection, that there is no security from insurrection while slavery lasts, why the Constitution would best be obeyed by putting an end to slavery, and an anti-slavery Congress would do that very thing.¹⁶

Much in line with Douglass's new interpretation, Lincoln eventually used his constitutional power as commander-in-chief to suppress a rebellion not of slaves but of *slave-owners*.

Understanding Douglass's Change of Interpretation

One explanation of the shift in Douglass's thinking on the Constitution—and one that he himself alluded to in his writings—had to do with his growing intellectual independence. During his period of refuge in Britain, following which he moved to Rochester, New York, away from the influence of Garrison and New England, Douglass had the intellectual space to reflect on the fact that there was more than one way to think about anti-slavery tactics and the Constitution. There, he opened himself to the ideas of a new and more political circle of abolitionists.

Another very important explanation for Douglass's change of mind is that at least some aspects of the anti-slavery reading of the Constitution have a fair claim to historical validity, and their logic attracted him. The Constitution of 1787, unlike the Civil War South's Confederate Constitution, was a compromise with slavery rather than a proud embrace of it.¹⁷ Not only radical abolitionists such as Frederick Douglass, but moderate reformers, including Abraham Lincoln, saw anti-slavery features in the Constitution. Lincoln, and many of his fellow Republicans differed with Douglass in holding that the Constitution protected slavery where it already existed, but agreed with him that the founders opposed slavery's expansion westward. Both Lincoln and Frederick Douglass looked at the language of the Constitution empowering Congress "to make all needful Rules and Regulations respecting the Territories," and saw in this the right to ban slavery from the new western territories, a reading of the Constitution that slavery's advocates violently opposed.¹⁸

Since Douglass, in 1860, was reading the Constitution to conform with his anti-slavery aspirations, he did tend to ignore contrary evidence. Even so, he was correct in arguing that the Constitution empowered (though did not require) the federal government to abolish the slave trade, which it did in 1808; that slavery was abolished in the antebellum North under the Constitution, even as slavery

expanded in the Old South; and that the founders had refused to use the word “slavery” in the Constitution. Moreover, in 1863, President Lincoln did use the war powers of the Constitution to issue the Emancipation Proclamation. On the other side of the ledger—Douglass’s later arguments notwithstanding—were the Constitution’s pro-slavery Fugitive Slave and three-fifths clauses, the guarantee of two decades of congressional inaction on the slave trade, the fact that it took a bloody Civil War to banish slavery, and the necessity of passing the thirteenth amendment to purge the Constitution of its compromises with slavery.

The debate over the Constitution and slavery proved persistent in the real world of antebellum politics, and grew increasingly contentious, especially after the Supreme Court weighed in with its pro-slavery reading of the Constitution in the *Dred Scott* decision in 1857. The same was true of the rise of the Republican Party, and the election of Lincoln, since their anti-slavery reading of the Constitution (regarding the right of the federal government to ban slavery in the new western states) helped push the South towards secession in 1861.

When students ask which was more correct, the early or the later reading of the Constitution by Frederick Douglass, one answer may be to introduce them to yet another Frederick Douglass. This is not the anti-Constitution Douglass of the 1840s or the pro-Constitution Douglass of the 1850s, but rather the Douglass who in April 1850 was in transit between these two positions. It was at this moment that he was most willing to acknowledge the paradoxical nature of the Constitution, and how that document’s ambiguities and jarring contradictions—pro-liberty here, pro-slavery there—fed the sectional crisis since both North and South had grounds for seeing their clashing stances

on slavery as true to the founders and the Constitution.

In pondering his verdict on this debate about the Constitution and slavery, Douglass asked, “Who is right in this contest?” and answered, “so far as the Constitution is concerned ... all are wrong,” since the Constitution was neither wholly pro- or anti-slavery but “at war with itself.”¹⁹ And the same would be true of antebellum America, whose political battles over such questions culminated in the bloodiest war in American history. The Constitution, written as it was by a convention whose members included vocal foes and friends of slavery, played a prominent role in rendering America, in Lincoln’s words, “a house divided against itself” on the slavery issue. In this sense the Constitution’s flaws paved the way for the Civil War. And yet the Constitution, with its war powers and amending process, also made possible the new birth of freedom that Lincoln heralded at Gettysburg, as emancipation and the thirteenth amendment finally took America beyond the constitutional compromises which first established and then divided the slaveholding republic. 📖

Notes

1. Garrison burned a copy of the Constitution at a meeting of the Massachusetts Anti-Slavery Society on July 4, 1854. See Peter C. Myers, *Frederick Douglass and the Rebirth of American Liberalism* (Lawrence: Univ. of Kansas Press, 2008), 84; Nathan Huggins, *Slave and Citizen: The Life of Frederick Douglass* (Boston: Little, Brown and Company, 1980), 64.
2. Frederick Douglass, “Oath to Support the Constitution,” *The North Star*, April 5, 1850, reprinted in Philip S. Foner, ed., *The Life and Writings of Frederick Douglass*, Vol. 2, *Pre-Civil War Decade* (New York: International Publishers, 1950), 118.
3. James Oakes, *The Radical and the Republican: Frederick Douglass, Abraham Lincoln and the Triumph of Antislavery Politics* (New York: WW Norton & Co., 2007), 14.
4. *Ibid.*, 12.
5. “Farewell Speech to the British People,” in Foner, *Life and Writings of Frederick Douglass*, Vol. 1, 209. The Constitution’s fugitive slave clause (article IV, section 2) stated that “No person held to service or labor, in one State under the laws thereof, escaping into

another, shall in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up to be claimed by the party to whom such service or labor may be due.”

6. *Ibid.*, 209-210.
7. *Ibid.*, 208.
8. *Ibid.*, 207.
9. Oakes, *The Radical and the Republican*, 18-20.
10. Frederick Douglass, “Change of Opinion Announced,” *The Liberator*, May 23, 1851, reprinted in *The Life and Writings of Frederick Douglass* Vol. 2, 155.
11. Oakes, *The Radical and the Republican*, 9.
12. Douglass, “The Dred Scott Decision,” *Life and Writings of Frederick Douglass* Vol. 2, 419.; *Notes of Debates in the Federal Convention of 1787 reported by James Madison*, (New York: WW Norton & Co 1966), 532; Sanford Levinson, *Constitutional Faith* (Princeton, N.J., Princeton Univ. Press, 1988), 31; Jack N. Rakove, *Original Meanings: Politics and Ideas in the Making of the Constitution* (New York: Alfred A. Knopf, 1997), 91.
13. Douglass, “The Constitution of the United States: Is it Pro-Slavery or Anti-Slavery?” *Life and Writings of Frederick Douglass*, Vol. 2, 477.
14. *Ibid.*
15. Paul Finkelman, ed., *Dred Scott v. Sanford: A Brief History with Documents* (Boston: Bedford Books, 1997), 110.
16. Douglass, “The Constitution of the United States: Is it Pro-Slavery or Anti-Slavery?” *Life and Writings of Frederick Douglass*, Vol. 2, 473.
17. In contrast to the founding fathers, with their compromises and their reluctance to mention racial terms or “slavery” in the Constitution, the Confederate States of America’s Constitution explicitly barred laws “impairing the right of property in Negro slaves” (William Lee Miller, *Arguing about Slavery: The Great Battle in the United States Congress* [New York: Alfred A Knopf, 1997], 21).
18. Abraham Lincoln, “The Old Policy of the Fathers, Address at Cooper Union, 1860,” in Richard N. Current, ed., *The Political Thought of Abraham Lincoln*, (Indianapolis, Ind.: Bobbs Merrill, 1967), 139-149; Donald G. Nieman, *Promises to Keep: African Americans and the Constitutional Order, 1776 to the Present* (New York: Oxford University Press, 1991), 13; Eric Foner, *Free Soil, Free Labor, Free Men, The Ideology of the Republican Party Before the Civil War* (New York: Oxford University Press, 1977), 75-76.
19. Frederick Douglass, “Oath to Support the Constitution,” in Foner, *Life and Writings of Frederick Douglass*, Vol. 2, 32.

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Many social studies teachers dread document lessons, particularly when centered on primary sources that seem dry, complex, and technical. However, discussions of the Constitution’s meaning regarding slavery and freedom can make its sections read as vital pieces of a fascinating historical puzzle, and not like the dry passages of a contract. The excerpts from the Constitution on page 247, as well as passages reflecting Frederick Douglass’s different interpretations of the Constitution, are the kinds of primary sources that engage students and stimulate discussions that continue after class. In the *Middle Level Learning* supplement to this issue of *Social Education*, Vanessa Rodriguez presents a lesson plan and handouts for debating the subject that has worked well among middle school students; using the same handouts, the lesson can easily be adapted for high schools. R.C.

• Frederick Douglass, Frederick Douglass: Selected Speeches and Writings. tags: america, curse, disregard, loathing, robbery, slaveholding, wrong. 161 likes. Like. "The white man's happiness cannot be purchased by the black man's misery." • Frederick Douglass. tags: civil-liberties, equality, race, racism. 156 likes. As I writhed under it, I would at times feel that learning to read had been a curse rather than a blessing. It had given me a view of my wretched condition, without the remedy. it opened my eyes to the horrible pit, but to no ladder upon which to get out. in moments of agony, I envied my fellow-slaves for their stupidity. I have often wished myself a beast. I preferred the condition of the meanest reptile to my own. Frederick Douglass (born Frederick Augustus Washington Bailey; c. February 1818 – February 20, 1895) was an American social reformer, abolitionist, orator, writer, and statesman. After escaping from slavery in Maryland, he became a national leader of the abolitionist movement in Massachusetts and New York, gaining note for his oratory and incisive antislavery writings. In his time, he was described by abolitionists as a living counter-example to slaveholders' arguments that slaves lacked the Frederick Douglass published three autobiographies. The first autobiography, *The Narrative of the Life of Frederick Douglass, An American Slave, Written by Himself*, catapulted him to fame and invigorated the abolitionist movement. Of Douglass's many speeches, "What to the Slave Is the Fourth of July?" was perhaps one of the most well-known. What was Frederick Douglass's legacy? Frederick Douglass was a prolific writer and a masterful orator who captivated readers and listeners throughout the U.S. and Great Britain. His talents contributed to the rise of antislavery sentiments in public conscio