Supplementary Material

Chapter 5: The Jacksonian Era—Foundations/Sources/The Constitutional Status of Slavery

---

Frederick Douglass, **"The Constitution of the United States: Is It Pro-Slavery or Anti-Slavery?"** (1860)[1]

Frederick Douglass (1818–95) was born a slave in Maryland. In violation of Maryland slave codes, he was taught to read. Douglas escaped north to freedom in 1838. Almost immediately, he participated in abolitionist activities. He soon became a prominent and successful orator and writer. Douglass initially endorsed the views of the radical abolitionist William Lloyd Garrison, who believed that the Constitution was a pro-slavery document, a "covenant with Hell." In 1851, Douglass announced a "change of opinion." Persuaded by such abolitionist writers as Lysander Spooner and William Goodell, he concluded that human bondage was inconsistent with the Constitution, properly interpreted. Slavery was "a system of lawless violence; that it never was lawful, and never can be made so."[2]

This speech responds to the Garrisonian constitutional argument that the Constitution of the United States sanctioned slavery. Wendell Phillips made liberal use of notes taken at the Philadelphia convention by James Madison and others and published decades later. Douglass eschewed any reliance on the history "behind" the text. He denied the authority of precedent and constitutional practice. Instead, Douglass emphasized the words used in the constitutional text and background principles of morality and justice. Douglas claimed that the Constitution should be interpreted as consistent with fundamental principles whenever possible. Is this a sound rule of construction? Could a person relying on that principle defend any desirable policy as consistent with the Constitution?

. . . What, then, is the question? I will state it. But first let me state what is not the question. It is not whether slavery existed in the United States at the time of the adoption of the Constitution; it is not whether slaveholders took part in the framing of the Constitution; it is not whether those slaveholders, in their hearts, intended to secure certain advantages in that instrument for slavery; it is not whether the American Government has been wielded during seventy-two years in favour of the propagation and permanence of slavery; it is not whether a pro-slavery interpretation has been put upon the Constitution by the American Courts—all these points may be true or they may be false, they may be accepted or they may be rejected, without in any wise affecting the real question in debate. The real and exact question . . . may be fairly stated thus:—1st, Does the United States Constitution guarantee to any class or description of people in that country the right to enslave, or hold as property, any other class or description of people in that country? 2nd, Is the dissolution of the union between the slave and free States required by fidelity to the slaves, or by the just demands of conscience? Or, in other words, is the refusal to exercise the elective franchise, and to hold office in America, the surest, wisest, and best way to abolish slavery in America?

. . . I, on the other hand, deny that the Constitution guarantees the right to hold property in man, and believe that the way to abolish slavery in America is to vote such men into power as well use their powers for the abolition of slavery. . . .

---

[1] Frederick Douglass, "The Constitution of the United States: Is it Pro-Slavery or Anti-Slavery?" (Halifax: NS: T. and W. Birtwhistle, 1860).

[2] Frederick Douglass, *Frederick Douglass: Selected Speeches and Writings,* ed., Philip S. Foner (Chicago: Chicago Review Press, 1999), 174.

. . . What, then, is the Constitution? I will tell you. It is not even like the British Constitution, which is made up of enactments of Parliament, decisions of Courts, and the established usages of the Government. The American Constitution is a written instrument full and complete in itself. No Court in America, no Congress, no President, can add a single word thereto, or take a single word thereto. It is a great national enactment done by the people, and can only be altered, amended, or added to by the people. . . . It should also be borne in mind that the intentions of those who framed the Constitution, be they good or bad, for slavery or against slavery, are so respected so far, and so far only, as we find those intentions plainly stated in the Constitution. It would be the wildest of absurdities, and lead to endless confusion and mischiefs, if, instead of looking to the written paper itself, for its meaning, it were attempted to make us search it out, in the secret motives, and dishonest intentions, of some of the men who took part in writing it. It was what they said that was adopted by the people, not what they were ashamed or afraid to say, and really omitted to say. Bear in mind, also, and the fact is an important one, that the framers of the Constitution sat with doors closed, and that this was done purposely, that nothing but the result of their labours should be seen, and that that result should be judged of by the people free from any of the bias shown in the debates. . . .

These debates were purposely kept out of view, in order that the people should adopt, not the secret motives or unexpressed intentions of any body, but the simple text of the paper itself. Those debates form no part of the original agreement. . . . Again, where would be the advantage of a written Constitution, if, instead of seeking its meaning in its words, we had to seek them in the secret intentions of individuals who may have had something to do with writing the paper? What will the people of America a hundred years hence care about the intentions of the scriveners who wrote the Constitution? These men are already gone from us, and in the course of nature were expected to go from us. They were for a generation, but the Constitution is for ages. Whatever we may owe to them, we certainly owe it to ourselves, and to mankind, and to God, to maintain the truth of our own language, and to allow no villainy, not even the villainy of holding men as slaves . . . to shelter itself under a fair-seeming and virtuous language. . . .

. . . Let us grant, for the sake of the argument, that the first of these [constitutional] provisions, referring to the basis of representation and taxation, does refer to slaves. We are not compelled to make that admission, for it might fairly apply to aliens—persons living in the country, but not naturalized. But giving the provisions the very worse construction, what does it amount to? I answer—It is a downright disability laid upon the slaveholding States; one which deprives those States of two-fifths of their natural basis of representation. A black man in a free State is worth just two-fifths more than a black man in a slave State, as a basis of political power under the Constitution. Therefore, instead of encouraging slavery, the Constitution encourages freedom by giving an increase of "two-fifths" of political power to free over slave States. So much for the three-fifths clause; taking it at is worst, it still leans to freedom, not slavery; for, be it remembered that the Constitution nowhere forbids a coloured man to vote. I come to the next, that which it is said guaranteed the continuance of the African slave trade for twenty years. . . . [T]his part of the Constitution, so far as the slave trade is concerned, became a dead letter more than 50 years ago, and now binds no man's conscience for the continuance of any slave trade whatsoever. . . . But there is still more to be said about this abolition of the slave trade. Men, at that time, both in England and in America, looked upon the slave trade as the life of slavery. The abolition of the slave trade was supposed to be the certain death of slavery. Cut off the stream, and the pond will dry up, was the common notion at the time.

. . .

[The so-called "Fugitive Slave Provision"] applies to indentured apprentices, and any other persons from whom service and labour may be due. The legal condition of the slave puts him beyond the operation of this provision. He is not described in it. He is a simple article of property. He does not owe and cannot owe service. He cannot even make a contract. It is impossible for him to do so. He can no more make such a contract than a horse or an ox can make one. This provision, then, only respects persons who owe service, and they only can owe service who can receive an equivalent and make a bargain. The slave cannot do that, and is therefore exempted from the operation of this fugitive provision.

. . .

[W]here human liberty and justice are at stake, . . . [t]here must be something more than history—something more than tradition. The Supreme Court of the United States lays down this rule, and it meets the case exactly—"Where rights are infringed—where the fundamental principles of the law are overthrown—where the general system of the law is departed from, the legislative intention must be expressed with irresistible clearness." The same court says that the language of the law must be construed strictly in favour of justice and liberty. Again, there is another rule of law. It is—Where a law is susceptible of two meanings, the one making it accomplish an innocent purpose, and the other making it accomplish a wicked purpose, we must in all cases adopt that which makes it accomplish an innocent purpose. . . . To me they seem just and rational. I only ask you to look at the American Constitution in the light of them, and you will see with me that no man is guaranteed a right of property in man, under the provisions of that instrument. . . .

Let us look at the objects for which the Constitution was framed and adopted, and see if slavery is one of them. . . . The objects here set forth [in the Preamble] are six in number: union, defence, welfare, tranquility, justice, and liberty. These are all good objects, and slavery, so far from being among them, is a foe of them all. But it has been said that Negroes are not included within the benefits sought under this declaration. This is said by the slaveholders in America, . . . but it is not said by the Constitution itself. 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-barrows, but we the people, we the human inhabitants; and, if Negroes are people, they are included in the benefits for which the Constitution of America was ordained and established. . . . This, I undertake to say, as the conclusion of the whole matter, that the constitutionality of slavery can be made out only by disregarding the plain and common-sense reading of the Constitution itself; by discrediting and casting away as worthless the most beneficent rules of legal interpretation; by ruling the Negro outside of these beneficent rules; by claiming that the Constitution does not mean what it says, and that it says what it does not mean; by disregarding the written Constitution, and interpreting it in the light of a secret understanding. . . .

The Constitution declares that no person shall be deprived of life, liberty, or property without due process of law; it secures to every man the right of trial by jury, the privilege of the writ of habeas corpus—the great writ that put an end to slavery and slave-hunting in England—and it secures to every State a republican form of government. Anyone of these provisions in the hands of abolition statesmen, and backed up by a right moral sentiment, would put an end to slavery in America. The Constitution forbids the passing of a bill of attainder: that is, a law entailing upon the child the disabilities and hardships imposed upon the parent. Every slave law in America might be repealed on this very ground. The slave is made a slave because his mother is a slave. But to all this it is said that the practice of the American people is against my view. I admit it. They have given the Constitution a slaveholding interpretation. I admit it. They have committed innumerable wrongs against the Negro in the name of the Constitution. Yes, I admit it all; and I go with him who goes farthest in denouncing these wrongs. But it does not follow that the Constitution is in favour of these wrongs because the slaveholders have given it that interpretation. . . .

My argument against the dissolution of the American Union is this: It would place the slave system more exclusively under the control of the slaveholding States, and withdraw it from the power in the Northern States which is opposed to slavery. . . . I am, therefore, for drawing the bond of the Union more completely under the power of the Free States. . . . Mr. Garrison and his friends tell us that while in the Union we are responsible for slavery. He and they sing out "No Union with slaveholders," and refuse to vote. I admit our responsibility for slavery while in the Union but I deny that going out of the Union would free us from that responsibility. There now clearly is no freedom from responsibility for slavery to any American citizen short to the abolition of slavery. The American people have gone quite too far in this slaveholding business now to sum up their whole business of slavery by singing out the cant phrase, "No union with slaveholders." To desert the family hearth may place the recreant husband out of the presence of his starving children, but this does not free him from responsibility. If a man were on board of a pirate ship, and in company with others had robbed and plundered, his whole duty would not be performed simply by taking the longboat and singing out, "No union with pirates." His duty would be to

restore the stolen property. The American people in the Northern States have helped to enslave the black people. Their duty will not have been done till they give them back their plundered rights. . . .