

The United States Constitution
Was Never a 'Pro-Slavery'
Document

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“[The slaveholders] see that the Constitution will afford slavery no protection when it shall cease to be administered by slaveholders. They see, moreover, that if there is once a will in the people of America to abolish slavery, there is no word, no syllable in the Constitution to forbid that result.”

-Frederick Douglass, 1860¹

As Douglass did, I would argue that there is nothing in the United States Constitution or its first ten Amendments (including the so-called “”slave-holding provisions”) which endorses, legally mandates, or guarantees the future existence of slavery in any state or in the United States as a whole after the year 1808. Although it is true that at the time of its ratification, Article I, Section 9 denied Congress the power to prohibit “The Migration or Importation of such Persons as any of the States now existing shall think proper to admit” for twenty years, still nowhere does the Constitution authorize or endorse either the continuation *or* the abolition of slavery beyond that time. Instead, the framers quite carefully left the matter of slavery unresolved—an unwritten chapter in the book of America’s future development. Further, both Article IV, Section 3 and Article I, Section 9 (as well as Article V allowing for amendments to the Constitution) provided open doors for Congress to, among other things, not only prohibit slavery in any U.S. territory at the time that the Constitution was written but also eliminate it entirely in the post-1808 United States if so desired which is, of course, what ultimately happened.

In his speech “The Constitution of the United States: Is It Pro-slavery or Anti-slavery?” Douglass goes even further by arguing that the spirit of the Constitution is actually *anti*-slavery as demonstrated, among other things, by the simple fact that there is no *explicit* reference to “slaves,” “slavery,” or “even “servitude” anywhere in the document, let alone any mandate that it

¹ Frederick Douglass, “The Constitution of the United States: Is It Pro-slavery or Anti-slavery?”, speech in Glasgow, Scotland, March 26, 1860. <https://www.blackpast.org/global-african-history/1860-frederick-douglass-constitution-united-states-it-pro-slavery-or-anti-slavery/>

should legally exist. Just as the Constitution is “color blind” by granting rights and privileges to *all* “people” (not merely “white people”), it is similarly “slavery blind” nowhere insisting on the legality of slavery at the federal level nor protecting its existence or perpetuation in the states beyond 1808. As to the other commonly called “slave-holding provisions,” it can likewise be shown that none of these endorse slavery or, again, even explicitly refer to it. Let us examine these briefly.

Although it was certainly understood that the “three fifths of all other Persons” to be excluded from enumeration in Article I, Section 2, Clause 3 referred to slaves, this reference by no means mandated the further perpetuation of slavery and, if anything, would have tended to discourage the institution by limiting the powers in Congress of the states which happen to be more populated by chattel slaves. Again, the clause refers to “Persons” not slaves. Similarly, Article IV, Section 2, Clause 3 mandating the return of all persons “held to Service or Labor in one State” to “the Party to whom such Service or Labour may be due” is sometimes referred to as the “fugitive slave clause” of the Constitution. In fact, James McPherson claims that “in plain English” the clause referred to slaves and slavery.² But, of course, the framers’ “plain English” explicitly *did not* refer to slavery or even “servitude” in the text of their Constitution! It’s true enough that slaveholders could and did jump on this clause to legitimize their right to partake in human bondage but, as Douglass asserted, it could also be argued that legally the clause could not even apply to slaves as they had no power to enter into contractual “Service or Labour” and were in fact mere “property.” Either way, the clause mandates no further existence of slavery or its existence as an institution. Apparently, some have even called Article I, Section 8, Clause 15 empowering Congress to a “provide for calling forth the Militia to execute the Laws of the

² James McPherson, *Ordeal By Fire: The Civil War and Reconstruction*, (New York: McGraw-Hill, 2010), pp. 83.

Union, suppress Insurrections and repel Invasions” a “slavery provision” simply because it *might* refer to the quelling of slave insurrections although, again, no explicit reference to slavery is mentioned or necessarily implied. Of course, calling out the Militia for action against insurrection might also refer to preventing errant states from organizing an armed rebellion against the Union.

So what, then, are the “open doors” for the future abolition of slavery under the U.S. Constitution and its first ten Amendments? First, in regard to the infamous Article I, Section 9: One might ask, why even include the “prior to the Year one thousand eight hundred and eight” in the clause at all if the intention were not to move to abolish the slave trade at some future date, namely twenty years hence? If the U.S. Constitution were to have been a pro-slavery document, the clause could just as well have denied Congress the power to prohibit “The Migration or Importation of such Persons as any of the States now existing shall think proper to admit” *in perpetuity*. Douglass goes further claiming that the very existence of Article I, Section 9 in the Constitution as such is further proof that it is an anti-slavery document simply “because it looked to the abolition of slavery rather than to its perpetuity.”³ Finally, there is the important, forward-looking Article IV, Section 3 authorizing Congress the power to “to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States.” Importantly, this clause is not subject to the “twenty year” proviso we see in Article I, Section 9 or in Article V. Theoretically, the framers potentially allowed for Congress to prohibit slavery in *any U.S. territory* from the get-go (as opposed to the “States now existing” in I, 9), not to mention in those within any future expansion of the nation. Again, although no explicit

³ Douglass, “The Constitution of the United States: Is It Pro-slavery or Anti-slavery?”

reference to slavery exists in the clause, it is another important element of the Constitution empowering the Congress to potentially end slavery.

But perhaps the most powerful argument that our Constitution was never inherently pro-slavery can be seen in the way that it was ultimately used historically to completely abolish slavery in the United States. This was the main thrust of Douglass's disagreement with the radical abolitionists who argued that the Constitution was a pro-slavery document through and through and that the free states should withdraw from any Union under its authority!⁴ As history has shown, Frederick Douglass's 1860 argument on the eve of the Civil War was proven to be a correct one:

I...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 ...

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.... Within the Union we have a firm basis of opposition to slavery. It is opposed to all the great objects of the Constitution.⁵

⁴ McPherson, 45.

⁵ Douglass, "The Constitution of the United States: Is It Pro-slavery or Anti-slavery?"