Frederick Douglass Changed My Mind about the Constitution

James Oakes

Frederick Douglass changed my mind about the Constitution—no small irony in view of the fact that Douglass himself so dramatically and publicly changed his own mind. Like many historians of slavery, I had long viewed the Constitution as a problem—not necessarily the compact with Satan that William Lloyd Garrison thought it was, but not all that far from historian Paul Finkelman, who isolated a dozen or so passages in the Constitution that implicitly recognized slavery.

Writing a book on Abraham Lincoln and Frederick Douglass forced me to reconstruct carefully three very different positions on slavery and the Constitution. The first was the view shared by the slaveholders and the Garrisonians, to which Douglass initially subscribed, that the Constitution was a proslavery document; the second was Douglass’s “strong” antislavery constitutionalism, which interpreted the Constitution as an antislavery document; and the third was Lincoln’s “weak” antislavery constitutionalism, which held that the Constitution recognized slavery in a couple of ways, but only out of necessity, while allowing Congress to restrict slavery in other ways. Having worked my way through these three interpretations I found myself persuaded by Lincoln, and I’m still inclined in that direction.

But shortly after finishing the book, I got myself wrapped up in an Internet discussion of the three-fifths clause and went back to a speech Frederick Douglass gave in Scotland on the eve of the Civil War. He argued, for example, that the fugitive slave clause does not actually mention slaves, and that there’s no reason to give the slaveholders the benefit of the doubt on the matter. Douglass was invoking a principle of constitutional interpretation that holds that the text itself is all that matters, that the intentions of the framers are irrelevant. This allowed him to argue—contrary to everything that most Americans at the time believed and that most historians today believe—that the three-fifths clause punished, rather than rewarded, the South for slavery. Douglass’s argument was disarmingly simple: take away the three-fifths clause and all the slaves would have been counted for purposes of representation, since the default position in the Constitution was that representation would be based on the entire population. By this reading the Constitution reduced the South’s representation by counting three-fifths rather than five-fifths of the slaves. Moreover, by inserting the three-fifths clause, the founders had planted in the Constitution an incentive for the slave states to increase their representa-

lation in Congress by emancipating their slaves. There is nothing in the actual text of the Constitution to justify any other reading, Douglass argued.

I had no easy answer to Douglass other than to invoke a different strand of constitutional interpretation, one in which the intentions of the framers did matter. But the more I dug into it, the messier things looked. The debates at the Constitutional Convention revealed a jumble of mixed motives and complicated intentions. The proposal to count three-fifths of the slave population was not part of either of the two main proposals, the Virginia plan and the New Jersey plan. In that sense, the three-fifths clause came out of nowhere, tossed into the discussions in Philadelphia as part of the debate over the treatment of large versus small states. Supporters and opponents of the three-fifths did not break down along pro- and anti-slavery lines, since most of the delegates expressed antislavery sentiments. Those who complained that the clause rewarded the South were often conservatives who resented southern political power, and their position was not that slavery should be abolished but that slaves should count for nothing for purposes of representation. Then, too, there is the other three-fifths clause in the Constitution, less well known, relating to taxation of slaves versus other forms of
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This state of mind, however, very soon subsided; and I was again seized with a feeling of great insecurity and loneliness. I was yet liable to be taken back, and subjected to all the tortures of slavery. This in itself was enough to damp the ardor of my enthusiasm. But the loneliness overcame me. There I was in the midst of thousands, and yet a perfect stranger; without home and without friends, in the midst of thousands of my own brethren—children of a common Father, and yet I dared not to unfold to any one of them my sad condition. I was afraid to speak to any one for fear of speaking to the Frederick Douglass. “What to the Slave Is the Fourth of July?” (1852). It carries your minds back to the day, and to the act of your great deliverance; and to the signs, and to the wonders, associated with that act, and that day. This celebration also marks the beginning of another year of your national life; and reminds you that the Republic of America is now 76 years old. They hate all changes, but silver, gold and copper change! Of this sort of change they are always strongly in favor. These people were called Tories in the days of your fathers; and the appellation, probably, conveyed the same idea that is meant by a more modern, though a somewhat less euphonious term, which we often find in our papers, applied to some of our old politicians. Frederick Douglass dramatically and publicly changed his own mind about the Constitution. Like Frederick Douglass, the author had originally viewed the Constitution as pro-slavery. Yet a close look at Douglass's writings revealed a Constitution that empowered the federal government to abolish slavery. Descriptors: United States History, Slavery, Constitutional Law, Political Attitudes, African Americans, Attitude Change. National Council for the Social Studies. 8555 Sixteenth Street #500, Silver Spring, MD 20910. Tel: 800-683-0812; Tel: 301-588-1800; Fax: 301-588-2049; e-mail: membership@