

If the Founders didn't compromise on slavery, the Constitution and United States wouldn't exist

For a country formed as a marriage between free and slave states, the Constitution was a compromise.

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Why are Americans debating whether the Constitution is a pro-slavery document more than 150 years after the abolition of slavery? Can it be that, after decades of disinterest, Americans have suddenly realized history is fascinating?

Historical debates are usually fairly esoteric, more likely to bore than to excite the general public. When historical debates inflame passions beyond the circles of academic history, it is a sign that the debate is not really about the past, but about the present. So it goes with the Constitution; the historical debate about slavery in the Constitution is heated because it is fundamental to current political arguments over the charge that America is systemically racist.



Pro-Slavery Sentiment in the Constitution?

The claim that the Constitution was pro-slavery rests on two clauses that dealt with slavery and supported the interests of slave-owners and slave states. One clause states that fugitive slaves, as well as other persons “held to service or labor,” shall be returned to their masters. The other says that three-fifths of slaves shall be counted to calculate the number of representatives a state may send to Congress, and the number of electors a state may send to the Electoral College in presidential elections.

Some argue that other sections of the Constitution were pro-slavery as well — for example, clauses guaranteeing various rights, privileges, and immunities to citizens — but the case is tenuous since such provisions are common to all republics. Likewise, there is no reason to assume the militia clause’s discussion of domestic insurrections was a veiled reference to slave revolts in particular, since domestic rebellions were common in slave and non-slave societies

alike. Moreover, it was a citizen uprising in a free state, Shays' Rebellion in Massachusetts (1786-87), that figured so prominently in the Federalist campaign to craft the new federal constitution.

This leaves only the three-fifths compromise, the fugitive slave clause, and the fact that the Constitution did not outlaw slavery nor the slave trade. All of these were consequences of the fact that the Constitution was a framework for mutual governance for five free states and eight slave states.

Such a marriage by necessity created a mutual government that reflected the wishes, interests, and concerns of both free and slave states. The way the framers secured this difficult union was to create a federal government of limited powers that had no jurisdiction to govern the domestic affairs of the individual states.

Balancing the Slave and Free States

It is true, therefore, that the federal Constitution did not force abolition on the slave states, but neither did it force slavery on the minority of free states. Had the federal government been empowered to govern the domestic affairs of the states, the majority (slave states) would have been able to force slavery on the minority (free states). The fugitive slave clause legitimized and secured slavery in the slave states, just as the Constitution legitimized and secured abolition and emancipation in the free states.

It was no coincidence that the federal Constitution created a government without any jurisdiction on slavery within the states. The result was that states remained free to retain or to change the status of slavery within their borders. Free states could adopt slavery, slave states could abolish slavery and become free states (as did New Jersey in 1804), and new states could adopt or reject slavery.

Moreover, the Constitution permitted Congress to outlaw the slave trade and ban slavery from U.S. territories, both of which Congress did in quick order. Further, Article 1, Section 9 established a ticking time bomb of sorts to outlaw the importation of slaves in 1808.

The Constitution Was a Compromise

A union between five free states and eight slave states demanded a constitution that could accommodate the wishes and fears of both free and slave states. Thus, the fugitive slave clause legitimized and secured slavery in the slave states, just as the Constitution legitimized and secured abolition and emancipation in the free states.

The three-fifths compromise likewise catered to the worries of slave states but also to those of free states. While southern states wanted all slaves counted for the purpose of congressional

apportioning, northern states wanted no slaves to be counted. The Constitution split the baby in two, giving both sides roughly half of what they demanded.

It is misleading, therefore, to ask whether the Constitution was pro- or anti-slavery. For a country formed as a marriage between free and slave states, the United States was necessarily a compromise. Its founding contract necessarily outlined a live-and-let-live approach to slavery.

This approach explains the Constitution's failure to abolish slavery in the slave states, and its permission for slave states to abolish slavery and for free states to remain free. This constitutional framework allowed Americans to voluntarily abolish slavery in their societies before any other Western society did, as it allowed other Americans to sustain pernicious and cruel slave regimes in their societies.

On the issue of slavery, therefore, modern Americans can see the glass as half-empty or half-full; it is a choice. The unarticulated question behind this debate, then, is why do those who see the glass half-empty choose to see it that way? And why do the others choose to see it half-full?

The answer has to do with the person making this choice — today, in 2020 — not with the people who drafted the Constitution 233 years ago. Those who are unimpressed with anti-slavery Americans in the late-18th century — who would say “too little, too late” — are understandably unimpressed with the Constitution they created and see the glass as half-empty.

Those who are impressed with the ability of those anti-slavery Americans to question and overturn moral assumptions that their civilization, their religion, and all of humanity had upheld for thousands of years are bound to be impressed with their accomplishments, and thus see the glass as half-full. How will you choose to see it?



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