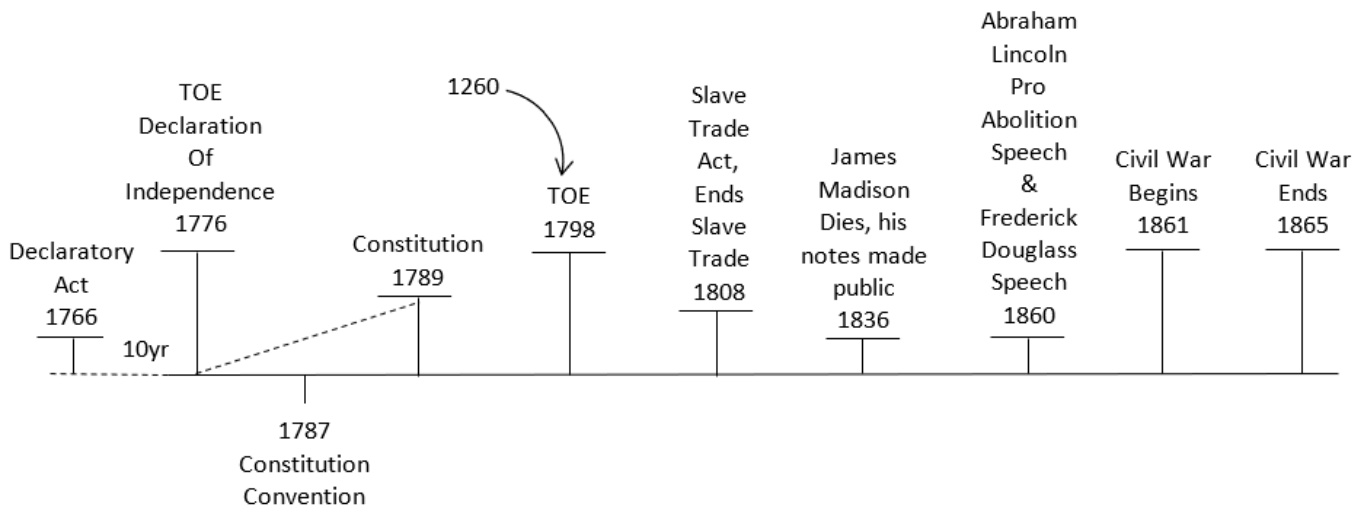


APS 2019: The U.S. Constitution



Introduction

The United States of America, the Constitution, the principles that are in place there, the history that encompasses that Constitution, the freedom there of, and the principles of liberty get enshrined in the Constitution. I'm suggesting the Constitution is perfect and it's going to do its work. As you go forward in time eventually there's going to be an apostasy from that, but the Constitution is perfect; I need to add a few cautions for that explanation. One is that what we see with the Constitution or what we see with the first Angels message is that the first Angels message cannot be separated from the second and the third but it needs the second and third to give it the added information and it needs to finish the job in which it was meant to do. So just like the first and second and third Angels message the Constitution needs something to help it get through this history to accomplish the work that it is supposed to accomplish. I was suggesting that it is the amendment system that allows you to add to that document things that are necessary as you go through time. The founders obviously couldn't prepare for everything and they knew that and they left a back door to add to that document.

Another thing I want to say is that they explored the idea at some point that there are things in the Constitution that need additional light but have fulfilled their purpose perfectly up until the moment in which they stop filling it perfectly. You have something in the Constitution that was perfect for its time, perfect for the amount of work that it did, but it needs some amendment to add further light to keep it going. When you say the Constitution is perfect, the first problem you have to get around is the biggest

issue of slavery. We use sister White's understanding of slavery and just common sense understanding that slavery was wrong; it was a bad thing.

One of the arguments we're going to talk about is that in the beginning of this history even from the Constitutional Convention in 1787 and all the way through until the beginning of the Civil War in 1860 was the idea that the founders framed the Constitution in racism and that it institutionalized slavery in the document of the Constitution. If that is true, then what I'm saying about the Constitution can't hold water, because there's a horrific error in it. There's no way you can say slavery was a time and circumstance kind of situation. It was just either wrong or it is right. We're going to have to wrestle with that. The way I want to proceed through that is to give us the history of the United States and try to look at the ideas the Founders had. I'm just going to look at the history all the way up to the Civil War and look through the Civil War. The war began in 1861 and it went to 1865. I also want to look at the history from 1798 to 1861.

Constitutional Convention

First thing I want to talk about is the Constitutional Convention itself in 1787. During the Constitutional Convention the Delegates from the colonies locked themselves in a building and they said, "We're going to stay in here and we're going to be sequestered until the end of this process. No information is going to leak out of this convention." They have some really important reasons for doing that and we will look at some of the commentary on that as we go forward. They locked themselves in and didn't let any information out and they deliberated about all the different parts of the Constitution. Slavery is still a big deal, at least in the South, but it is becoming less and less popular in the North. There are lots of emancipation efforts that are taking place in this history to free the slaves in certain states. Now there are different kinds of emancipation, some people favored gradual emancipation, and some favored immediate emancipation. Gradual emancipation was where the first generation of slaves would die in slavery, but the next generation, the children of the first generation of those slaves would work until a certain amount of time and then they would be released. Most of the time it was after the prime of their life so that they would get the best service out of them and then let them go around age 28 or 29 or something like that. They would then be free, and they could go live their life. There are different variations of that gradual emancipation but those were the two options, either the gradual or the immediate. There were different opinions on which one it should be. In the North, they were doing both and many of them just totally abolished slavery out right. That is the history in which we are dealing

with. So, the founders have this problem because they're facing what to do with this, because to ratify a document everyone needs to agree on it, all thirteen colonies. Anything less would not do and such a division was present within the convention making it hard for all the colonies to agree and come together.

Another problem they were facing was how to get everyone on board. Some of the founders were tricky in the way that they inserted arguments, and how they got around the South's problems. Some founders wanted to support abolition in a more anti-slavery way and they were able to get around the problems of the Southern States in really tactful ways. We'll talk about that as we go forward.

So, they sequestered themselves in a building for about six months, maybe a little bit more, and what happened was all of those documents, all the notes, and anything anyone took down of what took place there was locked away; no one was allowed to have it. The first information that was able to be released about what actually took place inside the convention and some of the arguments that were taking place was when James Madison died. James Madison was a Virginian and he was probably the most famous and most important architect of the Constitution. What he did was took all the notes he had from the convention and made them public upon his death; his notes become available to everyone. He died in 1836 and then his notes got released. He had some really important statements in his notes that help us to understand the ideas of the founders or framers at that time. This is from the New York times:

Framers On Slavery

In 1836, the wealthy slaveholding Virginian **James Madison** died. The most important architect of the nation, he made possible the publication of his notes, breaking the seal on the "convention's agreed-upon secrecy." They revealed that during a key debate over import duties on the slave trade, **he had persuaded the framers not "to admit in the Constitution the idea that there could be property in men. The reason of duties did not hold, as slaves are not like merchandise, consumed. &c."** With that posthumous revelation, Wilentz argues, "the framers left room for political efforts aimed at slavery's restriction, and eventually, its destruction, even under a Constitution that safeguarded slavery." *NYTimes*

One thing we want to pick up from this phrase from Madison's notes is he got the framers to agree to not include the idea or phrase that men were property or that you could have property in men. The second you make a man property you take away his rights as a human being, you make him not human.

The framers left room for political efforts aimed at slavery's restrictions and eventual destruction even amid a constitution that safe guards slavery. They left room here to maneuver around slavery and we'll try to explain how that is. Another delegate who was present during the Constitutional Convention, Elbridge Gerry, made a declaration at the convention that the convention should have **"nothing to do with the conduct of the States as to Slaves, but ought to be careful not to give any sanction to it."**

That seems like a little bit of a contradiction and we're going to see this going forward, this idealism. The idea is that in the Constitution we're going to frame and we're not to sanction slavery, but at the same time, we are not going to intervene in the states that want to have slavery. That's a complex thought. We are going to see that more and more. During the convention they have a few points. One is that they want to add this pro slavery proposal or clause into the Constitution, and Madison is recorded as saying that he, **"seemed to wish some provision should be included in favor of property in slaves."** But he had said before that he was against anything that says that slaves are property into the Constitution. Those are hard quotes, because they don't have the context around them.

I just want to read what they did and this is the way they framed it and I'll just tell you where we're going with this so you can try to conceptualize it. In the United States we have the Federal Government and the States; there's a distinction between the two of them. There's state law and there's federal law, which are two different things. States make their own laws; they set their own rules. But even though they make their own laws, they have to be subordinate to the federal government. There are certain things the federal government doesn't touch, it doesn't allow or disallow, because it defers to the states. They let the states make certain decisions and one of those is slavery. But what the founders tried to do was to make it so that the federal government was anti-slavery while it allowed the states to pick whether they were pro-slavery or anti-slavery.

The Northern states were anti-slavery; they wanted emancipation for all their slaves, and all the slaves were free in the North by the early eighteen-hundreds. The Southern states were still deeply entrenched in slavery, so the states are allowed to make their own decision. There is a little bit of freedom in choice here that is allowed. That is the idea they're trying to frame and what we're going to continually come back to is the idea of property in man. Confederates continually fight to have the idea of property in man brought into the Constitution, but the framers continually reject that notion and actually do the counter of those things, while at the same time allowing the Southern states to feel as though slavery is

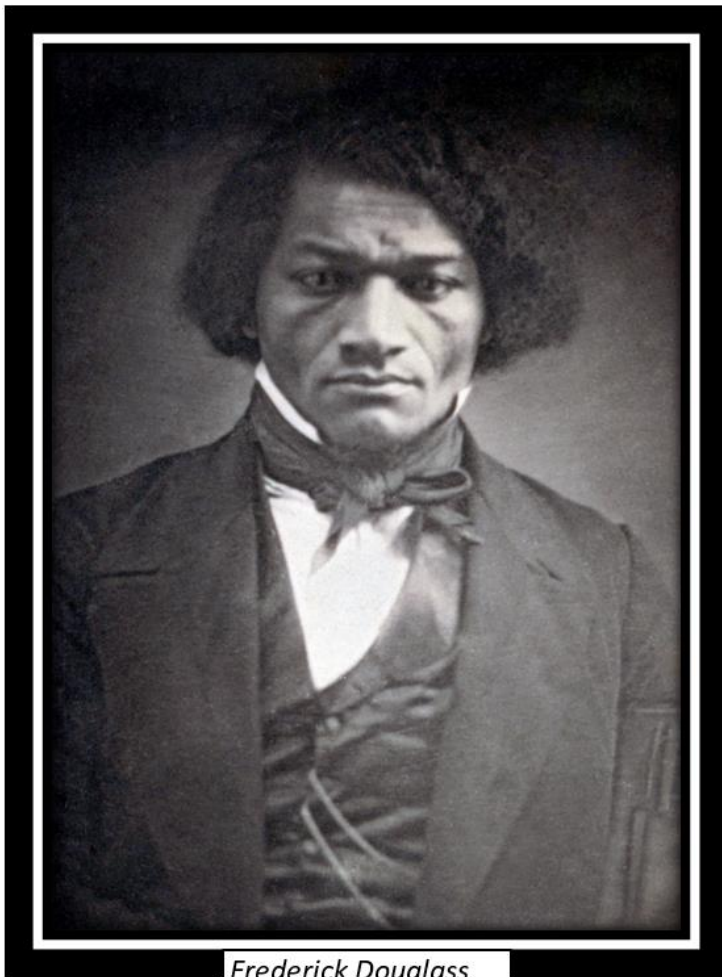
in the Constitution. We will explain that here as we go. It's a confusing thought but they leave enough room to where the constitution reads as if it has nothing to do with slavery.

There are only three places in the Constitution where some people believe the Constitution is talking about slavery, and we're going to look at those three places. The wording is a bit weird, so we're going to try to break the wording down. The first one is Article 1 Section 2 of the Constitution; this is often referred to as the Three-Fifths Amendment clause. We're going to read, talk about it, and see some of the points, then I also want to let Frederick Douglass give us some arguments about it. Frederick Douglass was a runaway slave who became an abolitionist and was one of the greatest minds of his time. I think it's important that he was a slave because he makes an argument that the Constitution doesn't support slavery. He was one of the people in 1860 that was an abolitionist. We will read also from Abraham Lincoln (in the next presentation), during the same time period in the year 1860, where he makes a speech that is pro abolition. One thing I want us to take into account here is the idea of two streams of information. When it comes to the Civil War history it is pretty obvious that you have one stream that is pro-slavery and one that is anti-slavery; today you have the left and the right. It is the same dynamic today as during that history, we are all using the Constitution to some degree to sustain our positions on the left or the right. The same thing was happening in the time of the Civil War, there were the pro slavery people and the anti-slavery people, both reading the Constitution, both making either a pro-slavery argument or an anti-slavery argument. So, again you have the two streams. What I want to suggest is that just like today we know that one side is right and one side is wrong. The people who were abolitionists were making pretty much all the same arguments and it's all about the idea of property in man. There were those who were making a religious argument. There were those who were going so far in an extreme way, people called the Garrisonians. They were after a man named Garrison who was an abolitionist. He was on the right side of the issue of slavery but he thought the Constitution was pro-slavery, and because of that, he said the government needed to be dissolved and fought against. He thought no one should vote or do anything, just dissolve the government and start over with a new constitution. The problem was he did not have an entirely pure argument. Two people I'm going to specifically highlight in this history is Frederick Douglass and Abraham Lincoln as our main witnesses for this thought. Both of them are speaking around the year 1860 right before the Civil War. Now let's look at the Constitution Article 1 Section 2 and so we will read through it and then I want to let Frederick Douglass give his argument on the topic.

Article 1 Section 2 Paragraph 3 of the Constitution

(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.)

Article 1 Section 2 of the Constitution is called the 3/5 clause. The idea here is that anyone who can be other people, whatever you define as other persons, can to be taxed, but they're also going to have three fifths of a vote in Congress. So, you need two persons, of other people, to make a full vote. What the framers did and what Frederick Douglass and Abraham Lincoln are going to argue is that by using the word "persons" they are directly telling you that they're not sanctioning slavery, because a slave is someone who's counted as property and property is not a person. Personal property are different things. If you read this explicitly the way it's written it does not allow you to say that slavery is mentioned in this clause. Slavery is not mentioned explicitly. They're going to make the argument that you need explicit statements to understand that. It's not just an interpretation, you need some explicit statements to make that point. In an actual way this does account for slaves because they are considered other people and they're going to be counted as 3/5 of a person. Another thing that they see is that Aliens also count as 3/5 of a person. So, there are other people included in some of the argument, it's not just about slaves. And this is the razor's edge I'm talking about because technically you read this as it has nothing to do with slavery, but if you're going to be very technical about the argument, based upon the interpretation in the way it was used at that time, you can say "OK it is about slavery". You can see how you can come to either conclusion about that thought.



Frederick Douglass

Frederick Douglass

In a speech before the Scottish Anti-Slavery Society in Glasgow, Scotland on March 26, 1860, Frederick Douglass outlines his views on the American Constitution. Let's read about this one clause from Frederick Douglass starting from the middle of his speech. This is a long speech and the context of this is that he's in a debate between him and another abolitionist. But the other abolitionist is framing the thought of the Constitution as being about slavery and Frederick Douglass is saying it's not about slavery.

“Let us look at them just as they stand, one by one. Let us grant, for the sake of the argument, that the first of these 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 its worst, it still leans to freedom, not slavery; for, be it remembered that the Constitution nowhere forbids a colored man to vote.” Ref.-1860 Frederick Douglass, The Constitution of the United States: Is It Pro-Slavery or Anti-slavery?

So, he's saying that even if it was talking about slavery it is actually an encouragement against slavery because it gives 2/5 more power to a black man in the North than it does to a black man in the South. For the people in the South, it's actually putting a restriction on their ability to vote; it gives them less

power. By this point in 1860 you have to remember where he's standing, the whole North is already free. So, the North has a full population count, of all minorities, of every black person, and every white person, because they count as a free person they count as a whole vote. So, if you make a slave free you get the full voting power, if you don't you get penalized; it actually leans towards freedom.

Article 1 Section 9 of the Constitution

(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.)

This is stating the migration and importation of such “Persons”, but the South wanted that to say the migration and importation of such “slaves”. That's what they wanted it to say but the other Founders won and they made the wording to be person's, not slaves. So, that's where the opposers are saying the Constitution is talking about slaves. What it is basically saying is that from 1789 to 1808 Congress is not allowed to prohibit the slave trade, but it doesn't explicitly say the slave trade. But the slave trade is falling under that clause. It is saying they have 20 years and then Congress is allowed to prohibit the slave trade. It's also important to note that two years before the slave trade ended, they passed a law that says the Atlantic slave trade has to end. That was the triangle trade going from the United States to Africa and the Caribbean and then back to the U.S. It's going to be prohibited then, but it can't be prohibited before 1808.

This is what Frederick Douglass says about that.

“I come to the next, that which it is said guaranteed the continuance of the African slave trade for twenty years. I will also take that for just what my opponent alleges it to have been, although the Constitution does not warrant any such conclusion. But, to be liberal, let us suppose it did, and what follows? Why, this — that this 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. Mr. Thompson is just 52 years too late in dissolving the Union on account of this clause. He might as well dissolve the British Government, because Queen Elizabeth granted to Sir John Hawkins to import Africans into the West Indies 300 years ago! 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.

Wilberforce and Clarkson, clear-sighted as they were, took this view; and the American statesmen, in providing for the abolition of the slave trade, thought they were providing for the abolition of the slavery. This view is quite consistent with the history of the times. All regarded slavery as an expiring and doomed system, destined to speedily disappear from the country. But, again, it should be remembered that this very provision, if made to refer to the African slave trade at all, makes the Constitution anti-slavery rather than for slavery; for it says to the slave States, the price you will have to pay for coming into the American Union is, that the slave trade, which you would carry on indefinitely out of the Union, shall be put an end to in twenty years if you come into the Union. Secondly, if it does apply, it expired by its own limitation more than fifty years ago. Thirdly, it is anti-slavery, because it looked to the abolition of slavery rather than to its perpetuity. Fourthly, it showed that the intentions of the framers of the Constitution were good, not bad. I think this is quite enough for this point."

He is saying that if it is talking about slavery it can't be proven, because it doesn't use the word slave or slavery. If it is talking about slavery, then it would have to be anti-slavery, because it is saying to the Southern states that to join the Union, they have 20 years of slavery and then the strings of the Atlantic slave trade would be cut. And his point was at the time when they thought that if you cut off the streams the river would dry up. It wasn't the case; we can talk about that going forward. The Southern states were able to really entrench themselves after this point even though they weren't importing slaves, because they had enough slaves to where slaves produced more slaves. They were able to continue thru that time. To cut off the slave trade didn't affect as much as they would have hoped. His idea is that all of that points to good intentions, not bad intentions, that it was an anti-slavery document, not a pro slavery document. Frederick Douglass didn't make this point but it is important; let me read the first sentence again.

(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.)

What's the important clause in there? **Now existing**. It says the only states that are allowed to have slavery at all or to partake of this system at all are the states that are now existing which are the 13 colonies. So, what has now happened is that the federal government or the Constitution bans slavery, by

extension because of this clause, into any of the federal territory or any state after the 13 states. That is a big point and it's putting limits around slavery and trying to shrink it down instead of letting it expand. There are going to be battles over this; actually, this is part of the reason they secede from the union, because they want to push slavery into the west and they think they have a Constitutional right to do it. But they don't let them do it.

The founders used wording in the Constitution to make it seem that slavery was there for the South, but it really isn't. The most important thing is that the founders kept it from explicitly saying that there is slavery. They kept away from that completely. So, slavery is being tolerated, but at the same time not to sanction. The South had justification to say that they can use slavery at that time and have slavery in their states but federally slavery was not allowed. Next we're going to look at the vernacular in the Constitution in what is referred to as the Fugitive Slave clause, which is article 4 section 2.

Article 4 Section 2 of the Constitution

(No Person held to Service or Labour 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 Labour, But shall be delivered up on Claim of the Party to whom such Service or Labour may be due.)

So, if you have someone who is in bondage in one state and they escape to another, it doesn't mean they are free; they are still slaves. They're going to have to go back and it doesn't change the fact that they're a slave. They still have to do the service. The problem with the clause is that it is worded very ambiguously; it doesn't say slave, it says anyone who owes service or labor. An apprentice of a master is someone who owes service or labor. So, if you're an apprentice to someone you have a certain amount of time that you're supposed to be an apprentice and you flee to another state, you still have to go back to the apprenticeship or go back to your master and finish the service that needs to be rendered. If you're an indentured servant or something like that, it isn't full slavery, but service or labor is due. There are many different things that this can cover because of the uncertainty of the wording. Technically it does cover slaves. A slave is someone who is bound by service in one state and if they flee, they are under that umbrella but technically it doesn't say slavery.

Frederick Douglass says this about the “Fugitive Slave Provision”

“ This is called the “Fugitive Slave Provision.” It is called so by those who wish to make it subserve the interest of slavery in America, and the same by those who wish to uphold the views of a party in this country. It is put thus in the speech at the City Hall: — “Let us go back to 1787, and enter Liberty Hall, Philadelphia, where sat in convention the illustrious men who framed the Constitution — with George Washington in the chair. On the 27th of September, Mr. Butler and Mr. Pinckney, two delegates from the State of South Carolina, moved that the Constitution should require that fugitive slaves and servants should be delivered up like criminals, and after a discussion on the subject, the clause, as it stands in the Constitution, was adopted. After this, in the conventions held in the several States to ratify the Constitution, the same meaning was attached to the words. For example, Mr. Madison (afterwards President), when recommending the Constitution to his constituents, told them that the clause would secure them their property in slaves.” I must ask you to look well to this statement. Upon its face, it would seem a full and fair statement of the history of the transaction it professes to describe and yet I declare unto you, knowing as I do the facts in the case, my utter amazement at the downright untruth conveyed under the fair seeming words now quoted. The man who could make such a statement may have all the craftiness of a lawyer, but who can accord to him the candour of an honest debater? What could more completely destroy all confidence in his statements? Mark you, the orator had not allowed his audience to hear read the provision of the Constitution to which he referred. He merely characterized it as one to “deliver up fugitive slaves and servants like criminals,” and tells you that this was done “after discussion.” But he took good care not to tell you what was the nature of that discussion. He have would have spoiled the whole effect of his statement had he told you the whole truth. Now, what are the facts connected with this provision of the Constitution? You shall have them. It seems to take two men to tell the truth. It is quite true that Mr. Butler and Mr. Pinckney introduced a provision expressly with a view to the recapture of fugitive slaves: it is quite true also that there was some discussion on the subject — and just here the truth shall come out. These illustrious kidnappers were told promptly in that discussion that no such idea as property in man should be admitted into the Constitution. The speaker in question might have told you, and he would have told you but the simple truth, if he had told you that he proposition of Mr. Butler and Mr. Pinckney — which he leads you to infer was adopted by the convention that from the Constitution — was, in fact, promptly and indignantly rejected by that convention. He might have told you, had it suited his purpose to do so, that the words employed in the first draft of the fugitive slave clause were such as applied to the condition of slaves, and expressly declared that persons held to

“servitude” should be given up; but that the word “servitude” was struck from the provision, for the very reason that it applied to slaves.”

In the statement Frederick Douglass is quoting his opponent and then he replies to his opponent's argument. What he is saying so far is that the debater is saying that this is the fugitive slave clause that allows slaves and those in servitude to be brought back like criminals to their respective states. But Frederick Douglass is saying that that is not at all what it says because they tried to insert the word slave into the discussion and tried to get in into the constitution but people like James Madison stood up and fought that and made it so that what it actually said was not explicitly speaking directly to slavery but anyone who owes any service. They directly fought the idea of making property in man. Which is again a continual theme we are seeing, the idea of property in man.

Frederick Douglas Continues

“ He might have told you that the same Mr. Madison declared that the word was struck out because the convention would not consent that the idea of property in men should be admitted into the Constitution. The fact that Mr. Madison can be cited on both sides of this question is another evidence of the folly and absurdity of making the secret intentions of the framers the criterion by which the Constitution is to be construed. But it may be asked — if this clause does not apply to slaves, to whom does it apply?

I answer, that when adopted, it applies to a very large class of persons — namely, redemptioners — persons who had come to America from Holland, from Ireland, and other quarters of the globe — like the Coolies to the West Indies — and had, for a consideration duly paid, become bound to “serve and labour” for the parties to whom their service and labour was due. It applies to indentured apprentices and others who have become bound for a consideration, under contract duly made, to serve and labour, to such persons this provision applies, and only to such persons.”

So, he is saying that the founders directly fought the idea of making property in man. And people like James Madison made sure that the word slave was struck out. Basically, it touches all these other people but it also touches slaves and that's why the South let it in there. Technically it doesn't say slave but you can read in slave. What I want you to see is that they're reading the word slave into it and that's why they allow these amendments or parts of the Constitution to be passed even though it's not explicitly talking about slaves. They believed they could read slave into it and so by that definition it safe guarded their ability to have slaves. But it doesn't say that and that's Frederick Douglass's point. THE END.