

AMERICAN CONSTITUTIONALISM
VOLUME II: RIGHTS AND LIBERTIES
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Supplementary Material

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

Wendell Phillips, *The Constitution: A Pro-Slavery Compact* (1856)¹

Wendell Phillips (1811–84) maintained that the Constitution of the United States immorally protected slaveholding. In 1844, Phillips published *The Constitution: A Pro-Slavery Compact*. The work relied on James Madison's recently published notes on the framing convention debates to support Phillips's claim that the persons responsible for the Constitution intended to establish a slaveholding republic.

The following excerpt is from the introduction to *The Constitution: A Pro-Slavery Compact*. What method of constitutional interpretation did Phillips use? Does the evidence support his conclusions? Why did Phillips claim the Constitution is pro-slavery when some of his political allies insisted the Constitution can be interpreted as an anti-slavery document?

...
These extracts [from Madison's notes] develop most clearly all the details of that "compromise," which was made between freedom and slavery, in 1787; granting to the slaveholder distinct privileges and protection for his slave property, in return for certain commercial concessions on his part toward the North. They prove also that the nation at large were fully aware of this bargain at the time, and entered into it willingly and with open eyes.

...

The clauses of the Constitution to which we refer as of a pro-slavery character are the following:

ART. 1, SECT. 2. – [the three-fifths clause]

ART. 1, SECT. 8. – Congress "shall have power . . . to suppress insurrections."

ART. 1, SECT. 9. – [the twenty year moratorium on federal bans on the international slave trade]

ART. 4, SECT. 2. – [the fugitive slave clause]

ART. 4, SECT. 4. – [the guaranty clause]

The first of these clauses, relating to representation, confers on a slaveholding community additional political power for every slave held among them, and thus tempts them to continue to uphold the system: the second and the last, relating to insurrection and domestic violence, perfectly innocent in themselves, yet being made with the fact directly in view that slavery exists among us, do deliberately pledge the whole national force against the unhappy slave if he imitate our fathers and resist oppression—thus making us partners in the guilt of sustaining slavery: the third, relating to the slave trade, disgraces the nation by a pledge not to abolish that traffic till after twenty years, without obliging Congress to do so even then, and thus the slave trade may be legalized to-morrow if Congress choose: the fourth is a promise on the part of the whole nation to return fugitive slaves to their masters, a deed which God's law expressly condemns, and which every noble feeling of our nature repudiates with loathing and contempt.

...

We do not produce the extracts which make up these pages to show what is the meaning of the clauses above cited. For no man or party, of any authority in such matters, has ever pretended to doubt to what subject they all relate. If indeed they were ambiguous in their terms, a resort to the history of those

¹ Wendell Phillips, *The Constitution: A Pro-Slavery Compact, or Extracts from the Madison Papers, etc.*, 3rd ed. (New York: American Anti-Slavery Society, 1856), 5–10.

times would set the matter at rest forever. A few persons, to be sure, of late years, to serve the purposes of a party, have tried to prove that the Constitution makes no compromise with slavery. Notwithstanding the clear light of history;—the unanimous decision of all the courts in the land, both State and Federal;—the action of Congress and the State Legislature;—the constant practice of the Executive in all its branches;—and the deliberate acquiescence of the whole people for half a century, still they contend that the nation does not know its own meaning, and that the Constitution does not tolerate slavery! Every candid mind, however, must acknowledge that the language of the Constitution is clear and explicit.

... [G]ranting that the terms of the Constitution are ambiguous—that they are susceptible of two meanings—if the unanimous, concurrent, unbroken practice of every department of the Government, judicial, legislative, and executive, and the acquiescence of the whole people for fifty years, do not prove which is the true construction, then how and where can such a question ever be settled? If the people and the courts of the land do not know what they themselves mean, who has authority to settle their meaning for them?

If, then, the people and the courts of a country are to be allowed to determine what their own laws mean, it follows that at this time, and for the last half century, the Constitution of the United States has been, and still is, a pro-slavery instrument, and that any one who swears to support it, swears to do pro-slavery acts, and violates his duty both as a man and an abolitionist. What the Constitution may become a century hence, we know not; we speak of it as it is, and repudiate it as it is.

... [T]hese pages prove the melancholy fact, that willingly, with deliberate purpose, our fathers bartered honesty for gain, and became partners with tyrants, that they might share in the profits of their tyranny.

...
If, then, the Constitution be, what these Debates show that our fathers intended to make it, and what, too, their descendants, this nation, say they did make it and agree to uphold,—then we affirm that it is “a covenant with death and an agreement with hell,” and ought to be immediately annulled. No abolitionist can consistently take office under it, or swear to support it.

But if, on the contrary, our fathers failed in their purpose, and the Institution is all pure and untouched by slavery,—then, Union itself is impossible, without guilt. For it is undeniable that the fifty years passed under this (anti-slavery) Constitution show us the slaves trebling in numbers;—slaveholders monopolizing the offices and dictating the policy of the Government;—prostituting the strength and influence of the nation to the support of slavery here and elsewhere—trampling on the rights of the free States, and making the courts of the country their tools. To continue this disastrous alliance longer is madness. The trial of fifty years with the best of men and the best of Constitutions, on this supposition, only proves that it is impossible for free and slave States to unite on any terms, without all becoming partners in the guilt, and responsible for the sin of slavery. We dare not prolong the experiment, and with double earnestness we repeat our demand upon every honest man to join in the outcry of the American Anti-Slavery Society,—

NO UNION WITH SLAVEHOLDERS!