

CONSTITUTION 101

Module 12: Slavery in America: From the Founding to America's Second Founding
12.3 Info Brief

ANTI-SLAVERY MOVEMENTS THROUGHOUT AMERICAN HISTORY

COLONIAL AMERICA

Slavery is obviously older than the U.S. Constitution. And slavery itself was written into colonial law as early as the 1660s in places like Virginia and the Carolinas.

By the 1700s, these colonial slave codes transformed slavery itself—making it inheritable. In other words, it was passed down from mother to child and was a lifelong condition based on race. This was known as “chattel slavery.” And this was a fundamental shift in how the institution of slavery worked. In the 1700s, American slavery expanded. To give just the example of Virginia—enslaved people grew from just 7% of the population in 1680 to 28% in 1700 and, finally, to a whopping 46% in 1750. So, slavery became a massive part of the Southern population—and white Southern wealth—in the 1700s.

With the signing of the Declaration of Independence in 1776, it also flew in the face of our nation's founding principles.

Throughout the colonial period, slavery wasn't only a Southern phenomenon. There were enslaved people in the North. However, during the 1780s, many Northern states took steps toward freeing enslaved people.

- Vermont ended slavery in their 1777 constitution.
- A state supreme court decision ended slavery in Massachusetts in 1783.
- Pennsylvania passed a gradual emancipation bill in 1780, followed by Rhode Island and Connecticut in 1784.

EARLY ANTI-SLAVERY MOVEMENTS

The **anti-slavery movement** was part of the American story from the very beginning.

- In January 1777, **Prince Hall**—a free African American in Boston—offered a petition for freedom to the Massachusetts House on behalf of seven African Americans. Like the Declaration of Independence, the petition offered a powerful vision of natural rights, arguing that the institution of slavery violates natural law. Massachusetts's highest court

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would go on to declare slavery unconstitutional in 1783—answering Prince Hall's prophetic call.

- During the 1780s, other Northern states took steps toward freeing enslaved people. Vermont ended slavery in their 1777 constitution. And Pennsylvania passed a gradual emancipation bill in 1780, followed by Rhode Island and Connecticut in 1784.
- Finally, consider **Benjamin's Franklin's** push to present an anti-slavery petition to the First Congress in 1790. Pennsylvania had the first abolition society in the country—founded in April 1775, called the Pennsylvania Abolition Society. The Quakers took a lead role in the society. A decade later, Benjamin Franklin was elected the society's president. In his final public act, he sent a petition—signed in February 1790—to Congress on behalf of the Pennsylvania Abolition Society, calling for the abolition of slavery and an end to the slave trade. The petition was introduced in the House and Senate shortly thereafter. Pro-slavery forces denounced the petition—and it sparked a heated debate in both the House and the Senate. The Senate took no further action on the petition, while the House sent it to a select committee. The House eventually tabled the resolution—putting it to the side—and argued that the Constitution limited Congress's power to end the slave trade until 1808. This ended the debate on slavery in the First Congress. Franklin died two months later.

DEBATES AROUND SLAVERY AT THE CONSTITUTIONAL CONVENTION

Now let's look at the Constitutional Convention in Philadelphia. What role did slavery play there?

All told, 25 of the 55 convention delegates were slaveholders (roughly 45%), and slavery was critical to many of these delegates' wealth—and to the economies of their home states. At the Constitutional Convention, the framers refused to recognize the right of property in men. However, they *did* compromise over the issue of slavery, enshrining protections for slaveholders in the Constitution.

The original Constitution prohibited Congress from ending the slave trade until 1808, counted enslaved people as three-fifths of a person for purposes of representation in Congress, and protected the slaveholder's power to retrieve those who escaped slavery.

In the end, the anti-slavery Northern delegates wanted to block the expansion of slavery and did not want to write explicit protection for slavery—recognition of the so-called “right of property in man”—into the Constitution. Many framers hoped that enough states in the North would move toward emancipation that slavery might die out in a generation or two.

Here's Connecticut's Oliver Ellsworth: “Slavery, in time, will not be a speck in our country.”

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The delegates were open to protecting the existing property rights of the slaveholders and were willing to compromise with Southern slaveholders in order to form a new Union, ratify the Constitution, and create a new national government stronger than the government under the Articles of Confederation. At the same time, Southern slaveholders fought to build in protections against future anti-slavery Northerners' attempts to restrict (and even abolish) slavery.

In the end, the legality of slavery—whether to permit it or to abolish it—was left to the states, where it stayed until the ratification of the 13th Amendment after the Civil War.

DEBATES OVER SLAVERY IN ANTEBELLUM AMERICA

Prior to the Civil War, *both* pro-slavery *and* anti-slavery advocates debated the Constitution's meaning and its relationship to slavery. Several different visions emerged.

PRO-SLAVERY ADVOCATES

Pro-slavery advocates like John C. Calhoun looked to the Constitution's text and history and argued that the Constitution was a *pro-slavery* document. They argued that provisions like the Three-Fifths Clause and the Fugitive Slave Clause made it clear that the Constitution was designed to protect the Southern slaveholders' right to hold enslaved people as property—what they referred to as a “right to property in man.” And they made the historical argument that the slaveholding states never would have agreed to the Constitution if they hadn't been able to strike that bargain. Finally, over time, the pro-slavery argument became even more aggressive—eventually arguing that the Constitution didn't just protect slavery in the existing slaveholding states, but also denied Congress the power to ban slavery elsewhere, including in the federal territories.

ANTI-SLAVERY ADVOCATES

Anti-slavery advocates also battled over the meaning of the Constitution and its relationship to slavery. These anti-slavery constitutional visions took on a variety of (sometimes conflicting) forms.

To begin, here's some quick background on the larger movement itself. The movement to end slavery gained momentum in the early-to-mid 1800s, eventually drawing the entire nation's attention. Because the Constitution allowed slavery to continue in the states, some wondered how it could ever be abolished through *constitutional* means. Abolitionism was an interracial movement, bringing African Americans and white Americans together in a common cause. African American and white Northerners—women and men, alike—increasingly joined anti-slavery societies over time. Their members sent petitions to Congress, pressed state legislatures to pass laws that protected the rights of alleged fugitives, and organized to resist

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slave catchers and kidnappers. As the decades advanced, a wide range of abolitionist and anti-slavery thought emerged as the country grappled with how to deal with slavery.

Ideas about freedom, equality, and the Constitution that emerged in the anti-slavery movement became the foundation for the birth of the Republican Party, the rise of Abraham Lincoln, and the ratification of the transformational Reconstruction Amendments after the Civil War. Some anti-slavery politicians pressed the national government to end slavery in places where it seemed to have unquestioned authority: the U.S. territories and the District of Columbia. Some sought to build an anti-slavery political party, separate from the two major parties—at the time, the Democratic Party and the Whigs. (This is how we get the Republican Party.) Others argued for a spiritual rejuvenation that would lead to the immediate abolition of slavery everywhere.

In Northern states, African American activists and their allies pressed for racial equality in citizenship, including the right to vote. And in the white South, Southern leaders felt threatened by talk of ending or even limiting slavery. They aimed to suppress anti-slavery thought and in doing so, violated core rights like free speech and religious liberty.

At the same time, a major division emerged among abolitionist and anti-slavery leaders over the relationship between slavery and the Constitution.

THE GARRISONIAN INTERPRETATION

The Garrisonians or “radical abolitionists”—including William Lloyd Garrison and Wendell Phillips—maintained that the Constitution was “a covenant with death and an agreement with hell.” Ironically, Phillips, Garrison, and their supporters agreed with pro-slavery advocates like Calhoun. They argued that the Constitution was a pro-slavery compact. They burned Constitutions and opposed involvement in political parties, arguing that the only way to end slavery was through moral persuasion and activism.

AN ANTI-SLAVERY CONSTITUTION

Other anti-slavery advocates opposed the Garrisonian vision and argued that the Constitution gave anti-slavery forces the power they needed to end slavery. For instance, anti-slavery advocates like Lysander Spooner rejected the Garrisonian argument and countered with a vision of the Constitution as a fundamentally anti-slavery document. And a group led by Salmon P. Chase—the future chief justice of the United States—adopted the view that, while the Constitution didn't empower the national government to attack slavery where it already existed in the slaveholding states, the federal government was free to abolish slavery in the District of Columbia, in the federal territories, and on all federal property. Scholars sometimes call this group the “political abolitionists” for its willingness to engage in electoral politics to achieve the end of slavery.

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Their slogan was “Freedom National, Slavery Local.” They sought to limit the spread and influence of slavery in the hopes that it might eventually die out without war or the end of the Union. This stance became the constitutional platform of the Liberty Party, the Free Soil Party, and eventually Lincoln’s Republican Party.

FREDERICK DOUGLASS

Frederick Douglass was one of the most powerful (and influential) anti-slavery voices in pre-Civil War America. Douglass began as a Garrisonian, but later changed his mind.

In a famous 1860 speech, Douglass read the Constitution’s text as a “glorious liberty document.” It’s a radically *textualist* speech, interpreting various clauses of the Constitution in an anti-slavery direction. Douglass reasoned that the Constitution doesn’t mention the word “slavery,” and argued that future generations shouldn’t search the history for “secret motives” or “dishonest intentions,” looking to protect slavery.

For instance, Douglass reads the Three-Fifths Clause as opening the door to freedom by recognizing the humanity of enslaved people. He reads the Constitution’s optimistic Preamble as bending toward freedom, *not* slavery. And he argues that the Fifth Amendment’s Due Process Clause should be read to support the claims of enslaved people—*not* slaveholders.

Here’s Douglass:

“Its language is ‘we the people.’ Not we the white people, not even we the citizens, not we the privileged class, not we the high, not we the low, but we the people.”

“If the South has made the Constitution bend to the purposes of slavery, let the North now make that instrument bend to the cause of freedom and justice.”

In the end, these constitutional visions helped frame a series of important debates in Congress and at the Supreme Court. In many ways, these debates culminated in the infamous *Dred Scott* decision and, eventually, the Civil War itself.