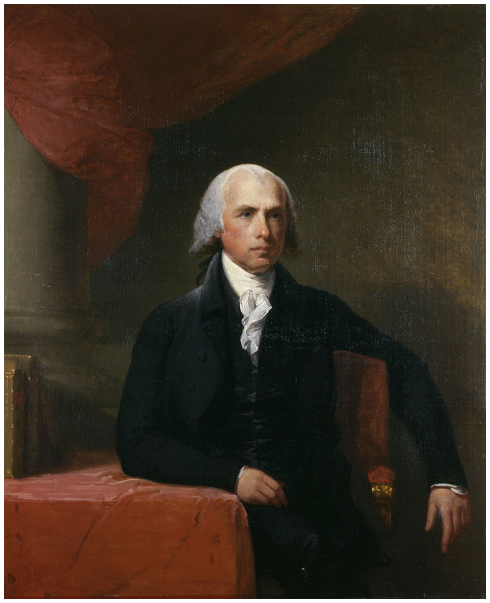
Background Essay: Slavery and the United States Constitution

- **Was the United States Constitution a pro-slavery document or an anti-slavery document?**

Written by: The Bill of Rights Institute

In the summer of 1787, delegates to the Constitutional Convention went to Philadelphia primarily to create a stronger national government than what existed under the first national framework of government, the Articles of Confederation. The issue of slavery was not on the agenda, but could hardly be avoided.

James Madison of Virginia wrote the main divisions in the convention were not those between large and small states, but "between the N[orthern] & South[er]n States" regarding the "institution of slavery & its consequences."



James Madison, one of the leading delegates at the Constitutional Convention, believed that the main divisions during the drafting of the new framework of government was over the issue of slavery.

Stuart, Gilbert. Portrait of James Madison. C. 1805. Painting.
https://en.wikipedia.org/wiki/James_Madison#/media/File:James_Madison_by_Gilbert_Stuart.jpg

The discussion of representation in a national Congress sparked the first major argument about slavery. Southern delegates wanted enslaved people to count the same as a free person because of the region's large slave population. Charles Pinckney of South Carolina urged it was "nothing more than justice." Northern delegates did not want to count the enslaved at all. Slaveholders considered them property; counting them would give a political advantage to the South in terms of representation.

A contentious debate took place about slaves and representation. The North did not want to count enslaved people at all for purposes of representation, whereas the South wanted to count them as fully human. The convention settled on a Three-Fifths Compromise: three enslaved persons would count for every five free persons for the purpose of representation. Not for the last time, southern delegates threatened to walk out of the convention if they did not get their way. William Davie of North Carolina warned that "the business was at an end" if the convention did not accept at least the three-fifths rule (though he wanted the enslaved to count fully).

The final version of the Three-Fifths Compromise stated that representatives and direct taxes would be apportioned among the states according to the number of free persons and "three-fifths of all other persons." Madison later explained the reason for using "person" instead of "slave." The delegates did not "admit in the Constitution the idea that there could be property in men." The Three-Fifths Clause was a compromise. It was a concession, or perhaps even a defeat, in the convention for the South because the section wanted five-fifths. However, it was a victory for the southern slave power in national politics. But the compromise did not validate slavery nationally.

The delegates to the Convention also fiercely debated the importation of enslaved Africans in the international slave trade. The issue became hotly contested after the Committee of Detail report of August 6 banned the national government from ever interfering with the slave trade.

The permanent protection of the slave trade angered many delegates who agreed with George Mason of Virginia, who called the slave trade an "infernal traf[f]ic." Luther Martin of Maryland averred that the trade was "inconsistent with the principle of the revolution and dishonorable to the American character." Edward Rutledge of South Carolina defensively argued that "religion and humanity had nothing to do with the question. Interest alone is the governing principle with Nations." Twelve of 13 states already had bans or high taxes on the slave trade, so the topic was sure to stir debate.

George Mason was a slaveholder, in Virginia but he spoke out against the institution during the convention.

Hesselius, John. Portrait of George Mason. C. 1750. Painting.
https://en.wikipedia.org/wiki/George_Mason#/media/File:George_Mason.jpg

The delegates from North Carolina, South Carolina, and Georgia strongly argued in favor of the slave trade continuing forever to ensure a constant supply of enslaved Africans. They saw a national limitation on the slave trade as a threat to slavery itself. Charles Pinckney cautioned the people of his South Carolina would "never receive the plan if it prohibits the slave trade." Many southern states, he predicted, "shall not be parties to the Union."

A Committee of Eleven— known as the Committee on the Slave Trade —met to hammer out a compromise on the issue. The committee severely curtailed the previous inability of Congress from ever interfering with the slave trade. The committee offered that Congress could not interfere with the institution until 1800. The delegates of the Lower South bargained hard to get the convention to approve pushing the date back to 1808.

The South lost a major point of protecting the slave trade forever but forced a concession of 20 years under threat of disunion. The region, with the help of northern merchants, would tragically import tens of thousands of enslaved Africans during those two decades. Ultimately, in 1807 President Thomas Jefferson called for and Congress passed a law banning the international slave trade on January 1, 1808 — the earliest constitutionally-allowable moment.

After reaching its compromise on the slave trade, the Constitutional Convention addressed a committee's proposal on fugitive slaves. The question of fugitive slaves

became a major issue because northern emancipations meant enslaved persons might run away to free states in the hope of gaining their freedom. A consensus existed on allowing runaways to be claimed by slaveholders based upon state comity, or states respecting the laws of other states. Pierce Butler of Georgia and Charles Pinckney introduced a motion requiring "fugitive slaves and servants to be delivered up like criminals." Yet many northern delegates opposed the motion because their states did not want to be forced to "deliver up" runaways.

The convention settled upon the Fugitive Slave Clause that read, "No Person held to Service or labor in one State, under the Laws thereof, escaping into another … shall be delivered up on Claim of the Party to whom such Service or labor may be due." Significantly, the clause did not recognize a property in man, did not compel free states to participate in the recapture, and did not give national sanction to slavery because it stated the institution was under state law. Although the enforcement provision was removed from the final version, it nonetheless declares the fugitive "shall be delivered up." The ambiguity would produce decades of controversy over who was responsible for enforcing the Fugitive Slave Clause. The Fugitive Slave Law of 1850 would later make highly controversial changes to this understanding and cause a firestorm of outrage and resistance in the North.

The Constitution was ratified in 1788 and became the law of the land. The Constitution did not end slavery, which continued to grow and spread in the South at the same time it receded in the North. However, the Constitution did not protect a property in man, nor did it provide for national validation of the institution. The Constitution supported the concept of "freedom national, slavery local." That is, slavery was to remain a matter of state and local law. Importantly, the federal government therefore could not interfere with the institution in the states where it already existed. This tenuous compromise related to slavery resulted in a "house divided," in Abraham Lincoln's words, "half-slave and half-free." This had significant consequences for the history of the United States from 1787 to 1865 and after.

The exact character of the Constitution also had significant consequences for how it was understood and interpreted. Some saw the Constitution as a pro-slavery document, even across a broad political spectrum. Radical abolitionist William Lloyd Garrison called the Constitution a "covenant with death" and an "agreement with hell." Chief Justice Roger Taney endorsed the idea of a pro-slavery Constitution strongly in *Dred Scott v. Sandford* (1857), which stated Blacks were not citizens of the country and could not be because they were inferior. Senator John Calhoun of South Carolina advanced a similar argument.

Black abolitionist Frederick Douglass agreed with Garrison for several years but then notably changed his mind. After long study and reflection, he defended the idea that the Constitution was anti-slavery. He called the Constitution a "glorious liberty document" and believed it supported anti-slavery principles. Abraham Lincoln concurred and had to navigate the shoals of "freedom national, slavery local" in his decisions related to slavery as president. The Emancipation Proclamation and Thirteenth Amendment showed Lincoln bound by constitutionalism and the virtue of prudence in dealing with slavery.

Scholars on both sides of the question continue to argue about the pro-slavery or anti-slavery character of the U.S. Constitution and what it meant and means to the American republic.