

Bob Fenster
NEH Courting Liberty
Structured Academic Controversy Lesson Plan

Standards Covered:

2017 New Jersey Student Learning Standards: Social Studies

- 6.1.12.A.3.H - Examine multiple perspectives on slavery and evaluate the claims used to justify the arguments.
- 6.1.12.A.3.I - Examine the origins of the antislavery movement and the impact of particular events such as the Amistad decision on the movement.

Common Core English/Language Arts-Literacy

- SL.9-10.1 - Initiate and participate effectively in a range of collaborative discussions (one-on-one, in groups, and teacher-led) with diverse partners on grades 9–10 topics, texts, and issues, building on others' ideas and expressing their own clearly and persuasively...
 - b. Work with peers to set rules for collegial discussions and decision-making (e.g., informal consensus, taking votes on key issues, presentation of alternate views), clear goals and deadlines, and individual roles as needed.
- SL.9-10.3 Evaluate a speaker's point of view, reasoning, and use of evidence and rhetoric, identifying any fallacious reasoning or exaggerated or distorted evidence.
- SL.9-10.4 Present information, findings, and supporting evidence clearly, concisely, and logically such that listeners can follow the line of reasoning and the organization, development, substance, and style are appropriate to purpose, audience, and task.
- RH.9-10.1 - Cite specific textual evidence to support analysis of primary and secondary sources, attending to such features as the date and origin of the information.
- RH.9-10.2 - Determine the central ideas or information of a primary or secondary source; provide an accurate summary of how key events or ideas develop over the course of the text.
- RH.9-10.9 - Compare and contrast treatments of the same topic in several primary and secondary sources.

Pre-Reading Overview

A segment of abolitionists led by William Lloyd Garrison believed that the evils of slavery were enshrined in the Constitution. Some modern historians have resurrected their arguments focusing on a variety of aspects of the compromises made at the Constitutional Convention. Below are excerpts typically identified as directly related to the institution of slavery. The argument has been extended to an array of other areas of the Constitution including the Electoral College, a system that they argue bolstered the southern states irrespective of population, ensuring that it would be extraordinarily difficult to elect a president with abolitionist views, and the amendment process, which under normal circumstances would make passing a future 13th Amendment impossible.

Article I, Section 2

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 8

Congress shall have the power... to suppress insurrections.

Article 1, Section 9

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.

Article 4, Section 2

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.

Article 4, Section 4

The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

Document A

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

...Forty of the shrewdest men and lawyers in the land assemble to make a bargain, among other things, about slaves. After months of anxious deliberation, they put it into writing, and sign their names to the instrument. Fifty years roll away, - twenty millions, at least, of their children pass over the stage of life, - courts sit and pass judgment, - parties arise and struggle fiercely; still, all concur in finding in the instrument just the meaning which the fathers tell us they intended to express: - must not he be a desperate man, who, after all this, sets out to prove that the fathers were bunglers and the sons fools, and that slavery is not referred to at all?

Besides, the advocates of this new theory of the Anti-slavery character of the Constitution quote some portions of the Madison Papers in support of their views, - and this makes it proper that the community should hear all that these Debates have to say on the subject. The further we explore them, the clearer it becomes the fact, that the Constitution was meant to be, what it has always been esteemed, a compromise between slavery and freedom.

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.

...

NO UNION WITH SLAVEHOLDERS!

Document B
Paul Finkleman, Slavery and the Founders (2001)

...[W]hat would happen if the Garrisonians accomplished their goal, and the North left the Union to form a nation based on freedom instead of slavery? It would be like moving the Canadian border to the Mason-Dixon line. Suddenly, slavery would be threatened in Kentucky and Virginia because slaves could now escape to a free country just by crossing the Ohio River.

Garrison believed that such a change in political boundaries would prove fatal to slavery. As slaves crossed the Mason-Dixon line or the Ohio or Mississippi Rivers, into freedom slavery would be weakened in the Upper South. Committed slave owners would move further south, which would further weaken slavery in the Upper South. Eventually Kentucky, Maryland, Delaware, and even Missouri might give up slavery and seek to join the free country. Pressure on Virginia would increase. Slavery, and hundreds of thousands of slaves, would be forced into the Deep South, where whites would become a desperate minority. Ultimately the institution would fall, perhaps after a series of rebellions in a region with a huge black majority, but just as likely simply from the height of its own isolation.

Part of this theory was based on the notion that slavery was inherently unstable, needing force to be viable. The United States government provided that force, spending its resources to hunt fugitive slaves, and when necessary suppress rebellions. Even when rebellions were put down by the local militia, those militias were armed by the national government. The South also benefited from the strength of the Northern economy. Southerners like James Henry Hammond of South Carolina thundered that "cotton is king" and declared "No, you dare not make war on cotton. No power on earth dare makes war upon it." But as the Garrisonians saw it, without the North and the proslavery Constitution was little more than a prosperous producer of commodities, devoid of industry and capital, lacking in population, arms, and manpower to hunt fugitive slaves and suppress rebellions. In the end, it was the proslavery bargain, and the North's contractual obligation under the Constitution to protect slavery, that made the system viable.

Document C

[Allen Guelzo, The Constitution: A Pro-Slavery or Anti-Slavery Document? \(2018\)](#)

...Abraham Lincoln, in his celebrated Cooper Union speech of February 27, 1860, carefully itemized how the members of the Constitutional Convention consistently voted for anti-slavery measures under the new Constitution. “As those fathers marked it, so let it be again marked,” Lincoln concluded, “as an evil not to be extended, but to be tolerated and protected only, because of and so far as its actual presence among us makes that toleration and protection a necessity. . . . An inspection of the Constitution will show that the right of property in a slave is not ‘distinctly and expressly affirmed’ in it.”

Lincoln’s argument has been echoed recently by Don E. Fehrenbacher and James Oakes. Fehrenbacher, in reviewing the work of the Constitutional Convention, dismisses the idea that the Convention ever permitted “the intrusions of slavery” except as “side effects of progress toward a new constitutional design.” If anything, the Founders “believed or hoped that somehow in the flow of time, slavery would disappear,” especially once the abolition of the slave trade came into effect. “The imprint of that expectation is visible in the document they finally approved.” Oakes notes how anti-slavery Republicans in the 1850s argued that since the Constitution gave slavery no explicit sanction—and gave the federal government no power to intervene in it in the states—that slavery was purely a matter of state legislation and action, while the Constitution as a national document assumed freedom to be the rule in all national affairs. Hence the Republican slogan, Freedom national, slavery sectional.

The original abolitionist argument was less a matter of serious constitutional argument and more a sensationalist strategy for awakening Americans to the encroachments of “the Slave Power.” The neo-abolitionist case is a more serious one, but it is marred by a highly partisan reading of the Constitution’s provisions, arising in some measure from a hostility to Constitutional originalism (so that if the Constitution is to be read through an originalist lens, originalism could be embarrassed into supporting slaveholding). The arguments of Lincoln, Fehrenbacher, and Oakes could be construed as suffering from an equal-but-opposite optimism about the Constitution’s pro-freedom intentions. But the proof surely lies in the slaveholders’ response to the election of Lincoln to the presidency in 1860: they were so convinced that the Constitution would not protect slavery that they attempted to secede from the Union, and then wrote a replacement Constitution which did expressly legitimize slavery. Their actions spoke louder than the neo-abolitionists’ words, and testified that the Constitution is a freedom document, after all.

Document D

David Azerrad, [What the Constitution Really Says About Race and Slavery](#) (2015)

The argument that the Constitution is racist suffers from one fatal flaw: the concept of race does not exist in the Constitution. Nowhere in the Constitution—or in the Declaration of Independence, for that matter—are human beings classified according to race, skin color, or ethnicity... Our founding principles are colorblind (although our history, regrettably, has not been).

The Constitution speaks of people, citizens, persons, other persons (a euphemism for slaves) and Indians not taxed (in which case, it is their tax-exempt status, and not their skin color, that matters). The first references to “race” and “color” occur in the 15th Amendment’s guarantee of the right to vote, ratified in 1870.

The infamous three-fifths clause, which more nonsense has been written than any other clause, does not declare that a black person is worth 60 percent of a white person. It says that for purposes of determining the number of representatives for each state in the House (and direct taxes), the government would count only three-fifths of the slaves, and not all of them, as the Southern states, who wanted to gain more seats, had insisted. The 60,000 or so free blacks in the North and the South were counted on par with whites.

Contrary to a popular misconception, the Constitution also does not say that only white males who owned property could vote. The Constitution defers to the states to determine who shall be eligible to vote (Article I, Section 2, Clause 1). It is a little known fact of American history that black citizens were voting in perhaps as many as 10 states at the time of the founding (the precise number is unclear, but only Georgia, South Carolina, and Virginia explicitly restricted suffrage to whites).

Reading the original Constitution, a visitor from a foreign land would simply have no way of knowing that race-based slavery existed in America. As Abraham Lincoln would later explain: “Thus, the thing is hid away, in the Constitution, just as an afflicted man hides away a [cyst] or a cancer, which he dares not cut out at once, lest he bleed to death.”

...Because the Constitution does not explicitly recognize slavery and does not therefore admit that slaves were property, all the protections it affords to persons could be applied to slaves. “Anyone of these provisions in the hands of abolition statesmen, and backed up by a right moral sentiment, would put an end to slavery in America,” [Frederick] Douglass concluded.

Procedures:

- Students will read the opening reading with the excerpts of the Constitution.
- They will then be organized into groups of four (with five being better than three if needed).
- Each group will be assigned a side of the issue, the question being “Was the Constitution a pro-slavery document?” and given a graphic organizer to help with the reading, preparation of their presentation, and for the listening portion.
- Teacher option - students can be assigned two readings (pro = A/B, con = C/D) that support their positions or all four readings.
- After reading documents, the pro-side presents their arguments for 2 minutes while the other side listens without interrupting. The entirety of the time must elapse before moving onto the next step.
- The listeners then have one minute to give a summary of what they heard the speakers say.
- The speakers quickly confirm that the summary was accurate and if need be, correct the listeners’ account or refer to something that was overlooked.
- Next the roles reverse, with the con position arguing their point for 2 minutes, followed by the listener summary, and the confirmation.
- The members of the group abandon their assigned roles and work towards a consensus position on the question. It is not required that they reach a consensus, however. They will report out their findings in writing or, time permitting, in a full class debriefing.
- Students will be asked to reflect on their understanding of the material. This can range to an exit ticket of a few sentences to a full-blown essay responding to the question, “Was the Constitution a pro-slavery document?”

STRUCTURED ACADEMIC CONTROVERSY
Was the Constitution a Pro-Slavery Document?

Arguments in Our Favor	Opposition Arguments

1. What did your group agree upon?

2. What was the most difficult area to reach consensus on?

3. After today's activity, what is your opinion on this issue?