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AND HE WAS NO SOFT-TONGUED APOLOGIST:

FREDERICK DOUGLASS AS A CONSTITUTIONAL THEORIST, 1865-1895

A Paper

Presented to the National Endowment for the Humanities
for the Younger Scholars Grant Program 1988

by

Robert George Pivarnik

October, 1988

And he was no soft-tongued apologist;
 He spoke straightforward, fearlessly uncowed;
The sunlight of his truth dispelled the mist,
 And set in bold relief each dark-hued cloud;
To sin and crime he gave their proper hue,
And hurled at evil what was evil's due.

Paul Lawrence Dunbar, "Frederick Douglass"

Acknowledgments

I would like to acknowledge the work of Waldo E. Martin on the psychology of Frederick Douglass. If it were not for Martin's research, this project would never have gotten underway.

I would also like to thank Elizabeth Ackert and the staff of the Colonial Williamsburg Foundation Research Library who were instrumental in helping me obtain the necessary resources for this work.

I would also like to thank Dr. Robert Stewart of the Museum of Afro-American Culture of the Smithsonian Institute without whom I never would have been able to look at the Douglass Manuscripts.

I would also like to thank Susan Donaldson, my staff, and my friends and family who not only helped me express myself on paper, but who also put up with me for the past few months.

Finally, I would like to thank my advisor and friend, H. Cam Walker, who encouraged me to reevaluate not only Douglass's words, but also my own thoughts. Her patience and understanding helped me get through the very difficult, if not confusing, Douglass era of my life.

Frederick Douglass, through his life and his philosophy, represents the broader American consciousness of the nineteenth century. Historians traditionally treat Douglass as a black leader, ex-slave, statesman, or abolitionist. Few deal with Douglass's political thought and his unique perspective as a black thinker in the post-war society despite his lifelong crusade for equal rights for both blacks and women. Douglass's interrelated concepts of race, natural rights, and morality all developed into a viable constitutional philosophy. It is this philosophy which has remained as a legacy of Douglass's true greatness. His unusual history as an ex-slave turned equal rights activist made his philosophy not only original, but unconventional as he constantly reassessed the significance of the Constitution to the existing situation of blacks and women in America. Douglass also intertwined his complex understanding (or lack of understanding, as his personal history shows) of his origin and his position within this Constitutional philosophy.

Douglass entered the world as a slave with no definite information regarding his lineage. He was originally brought up by his grandparents, Betsey and Isaac Bailey, on the Eastern Shore of Maryland. The inherent cruelty of the slave system, however, soon separated Douglass from his grandparents, and he was reestablished on the plantation of Colonel Lloyd. There, he was placed under the care of another slave woman, "Aunt Katy." In actuality, she was not directly related. While she did harbor some maternal feelings, "Aunt Katy" often clashed with Douglass and sometimes starved him for his bad behavior. He met his

mother, Harriet Bailey, infrequently, seeing her at most five times during his childhood. His recollections of her, though, are vivid in the devotion of a mother to her son.¹ In one instance, he remembers her reaction to "Aunt Katy's" threat to starve him:

I shall never forget the indescribable face of her countenance. . . . There was pity in her glance at me, and a fiery indignation at Aunt Katy at the same time; . . . she read Aunt Katy a lecture which she never forgot. My mother threatened her with complaining to the old master in my behalf; . . . That night I learned the fact, that I was not only a child, but **somebody's** child.²

The "somebody" to which Douglass referred, as best as he could establish, was the old master, Aaron Anthony. Douglass had to deal not only with the fact that he was a slave, but also with the knowledge that he was the bastard son of his master. Estranged from his mother by location, since she worked on a plantation nearly twelve miles away, and isolated from his father by his simple existence as a slave, Douglass concluded that "at the age of six, he was alone in the world."³ "In my loneliness and destitution," Douglass said, "I longed for some one to whom I could go, as to a father and protector."⁴ He

¹Frederick Douglass, Life and Times of Frederick Douglass (New York: Collier Books, 1962), pp. 27-35 (Hereinafter cited as Life and Times).

²Frederick Douglass, My Bondage and My Freedom (Chicago: Johnson Publishing Co., 1970), p. 36.

³Dickson J. Preston, Young Frederick Douglass: The Maryland Years (Baltimore: Johns Hopkins University Press, 1986), p. 40.

⁴Life and Times, p. 90.

would carry this feeling of loneliness and this need for protection well into his adult life.

At an early age, Douglass realized that as a slave, he was in conflict with the free men of his society. He learned as a child that nothing was his own; rather everything belonged to the "Old Master." Douglass asked himself, "Why am I a slave? Why are some people slaves, and others masters? Was there ever a time this was not so? How did the relation commence?"⁵ It was this inquisitive nature that prevented Douglass from accepting blindly his position as a slave. By the age of thirteen, he was reading proficiently despite the warnings and punishments of his new master, Hugh Auld. Having learned to read and write, Douglass constantly sought to learn more about the world around him. His favorite book, The Columbian Orator, opened his mind to the possibility of eventual freedom through knowledge and skillful oration.⁶ In Life and Times of Frederick Douglass, Douglass explained the significance of the story of the slave, Sheridan, who rationalized his way to freedom in a debate with his master:

The mighty power and heart-searching directness of truth, penetrating the heart of a slaveholder and compelling him to yield up his earthly interests to the claim of eternal justice, were finely illustrated in the dialogue, and from the speeches of Sheridan I got a bold and powerful denunciation of oppression and a most brilliant vindication of the rights of man.⁷

⁵Phillip S. Foner, Frederick Douglass (New York: The Citadel Press, 1964), p. 18.

⁶Life and Times, p.84.

⁷Life and Times, p.85.

Douglass idolized Sheridan's quest for truth and used it as a basis for much of his political theorizing in the future--always seeking the truth behind the words.

As a free man, Douglass turned much of his pursuit of truth into defiance towards the white society which refused to recognize truth. His conflict with the white society, based on his history as an ex-slave, was sharpened by the color of his skin. In many ways, he was still a slave to social attitudes and prejudice. Douglass noted, "A man is worked upon by what he works on. An individual may carve out his circumstances, but his circumstances will carve him out as well."⁸ Douglass never forgot his past. He often recalled his life as a slave in his speeches and orations. He used the following scene to portray the inhuman circumstances of the slave condition:

Our corn-meal mush, when sufficiently cooled, was placed in a large wooden tray, or trough, . . . set down, either on the floor of the kitchen, or out of doors on the ground; and the children were called, like so many pigs; and like so many pigs they would come, and literally devour the mush--some with oyster shells, some with pieces of shingles, and none with spoons. He that eat [sic] fastest got most, and he that was strongest got the best place; and few left the trough really satisfied.⁹

In his analysis of Douglass's life and autobiographies, historian Peter Walker explains Douglass's continued alliance with the slaves:

⁸Phillip S. Foner, The Life and Writings of Frederick Douglass, Vol.II (New York: International Publishers, 1955), pp. 304-305 (Hereinafter cited as Life and Writings).

⁹My Bondage and My Freedom, pp. 132-133.

While watching a slaveship being loaded at the Baltimore wharves Douglass pledged himself to the struggle, 'I then resolved that whatever power I had should be devoted to the freeing of my race.' With his pledge made as a youth in the Baltimore docks, Douglass aligned himself with the black masses, and thus accepted a racial and class identity for which the remainder of his life was the active confirmation . . . such an identity and confirmation were natural enough while chattel slavery was inherent in American society. Indeed, there was no other way American blacks could define themselves. The simple fact of being black linked them with a slave class.¹⁰

Douglass's black identity was suspended between his past status as a slave and his role as a freedman in a political society which failed to recognize him as a citizen. In his own life, and in the lives of his fellow blacks, Douglass sought to redefine his role as an American black. Walker surmises that "all of his actions and all of his motives for action stemmed from his refusal to be a slave, either under the law or to racial prejudice, and from his proud willingness to be a *Negro*."¹¹

Douglass's rationale for his constitutional philosophy became inextricably bound to his conception of self. Douglass admitted, "A man's character always takes its hue, more or less, from the form and color of things about him."¹² His motives wavered between insecurity and pride--defensive and offensive. For instance, Douglass wrote in

¹⁰Peter F. Walker, Moral Choices: Memory, Desire, and Imagination in Nineteenth Century American Abolition (Baton Rouge: Louisiana State University Press, 1978), p.218.

¹¹Walker, p.222.

¹²Waldo E. Martin, The Mind of Frederick Douglass (Chapel Hill: University of North Carolina Press, 1984), p.247.

a letter to Lyceum founder James Redpath on July 29, 1871, "It is too late now to do much to improve my relation to the public. I shall never get beyond Frederick Douglass the self-educated fugitive slave."¹³ Such a defensive stance is in clear opposition to Douglass's determined attitude in his editorial in the New National Era on February 1, 1872, where he stresses the importance of black voters asserting their political power and removing those Senators from office who do not serve the black cause for equality.¹⁴ Douglass was forced constantly to redefine himself depending upon his situation. An accurate portrayal of Douglass must also incorporate his role as a black spokesman. A reporter from upstate New York referred to Douglass as the "able and eloquent champion of the African race."¹⁵ It was a role, which, although not solicited, slowly became a part of Douglass's character. Walker believes, in fact, that in his autobiographies "Douglass spoke more for black Americans than for himself. His recapitulation of his life is less an analysis of self than it is a history of American Negroes restated in personal terms."¹⁶ Douglass's words and rhetoric can be taken out of their personal context and applied to the general black public. If Douglass suffered, blacks suffered. If Douglass could be free, blacks could be free. Such was the analogy--in Douglass's mind and in the minds of black Americans.

¹³Martin, p.251.

¹⁴Life and Writings, Vol. IV, p.288.

¹⁵Walker, p. 220.

¹⁶Ibid., p.223.

At the root of Douglass's self-conception was a firm base in moral upbringing. In The Mind Of Frederick Douglass, historian Waldo Martin examines Douglass's preoccupation with a moral conscience. "Back of Douglass's reform activities, . . . was a belief in the Christian ideals of love, morality, and justice, and the natural rights philosophy of the sanctity of life, liberty, and happiness, all underpinned by a belief in human freedom."¹⁷ Douglass associated the plight of blacks with the plight of the Israelites in Egypt--they are both oppressed groups of slaves which shall be delivered to freedom if they remain true to their virtue. Everything, to Douglass, became a moral question--a struggle between good and evil, slave and master, virtue and immorality. For instance, Martin argues that,

To Douglass, the very idea of prejudice was utterly revolting. He deplored it in all of its manifestations, whether based on religion, class, color, race, or sex. 'A moral disorder' and the consequence of a 'diseased imagination,' prejudice was irrational, evil, unnatural, and unjust.¹⁸

Douglass constantly imposed his moral code upon every aspect of his life and the lives of those around him.

The "Douglass" who entered the anti-slavery movement in 1839 was a combination of myriad experiences. He embraced every aspect of his past as part of his natural character. Douglass's "self" was black, ex-slave, half-white, oppressed, and free; he was abolitionist,

¹⁷R.J.M. Blackett, "This Land of Liberty Built Upon a Foundation of Slavery: Frederick Douglass and the Dilemma of the Afro-American Experience," Reviews in American History 14 (September 1986), pp. 361-362.

¹⁸Martin, p.109.

activist, moralist, spokesman, historian, and autobiographer. His identification with his mother and the uncertainty surrounding his father produced in Douglass an uncontrollable yearning for protection and security. He constantly reassessed his past in order to define his position in the present. According to Waldo Martin,

In his three autobiographies, . . . Douglass carefully delineated his self-image. It betrayed a conscious and unconscious elaboration of his idealized self . . . Each reveals his strong compulsion to play a determinative role in the design and construction of history's heroic vision of himself. . . . They served not only to present Douglass to the world as he desired to be seen, but they also revealed his profound need to grapple with his originally humble and obscure identity, recasting and invigorating it in the heroic mold. The autobiographical Douglass, the central thread in the protean tapestry of the heroic and symbolic Douglass, is an indispensable clue to the inner Douglass.¹⁹

It was this inner Douglass which came to the forefront in the development of his Constitutional beliefs.

Early in his public career, Douglass left most of the political theorizing to leading anti-slavery advocates, especially William Lloyd Garrison. Douglass followed the Garrisonian belief that the Constitution was a pro-slavery document. Moreover, he supported Garrison's argument that "the Constitution 'subjects three million persons to hopeless bondage' and therefore must be rejected." The "argument that the Constitution might be either changed or interpreted

¹⁹Ibid., pp.272-273.

differently so that it could be used to enforce freedom rather than slavery did not appeal to Garrison."²⁰ Douglass viewed the Constitution as intrinsically bad if the founding fathers, in fact, had framed a document for the purpose of maintaining slavery. He could not support a Constitution which was in opposition to itself.

The women's rights movement, another component of Douglass's political philosophy, also raised a similar constitutional problem. Douglass owed much of his success to women. He fondly remembered Lucretia Auld, the first white person to show him any true affection. Douglass believed, "She pitied me, if she did not love me. She sometimes gave me a piece of bread and butter, . . . solely out of the tender regard she had for me."²¹ Sophia Auld would eventually help Douglass to learn to read and write until the protests of her husband became too great to resist. The Female Anti-Slavery Society helped him found the North Star in Rochester in 1847. Women like Susan B. Anthony and Abby Kelley often accompanied him on anti-slavery tours, as well. Douglass soon realized that the arguments he used against slavery were also being used to protest against the subjugation of women--black and white. On July 14, 1848, the North Star carried a sympathetic account of the historic Seneca Falls Convention, while almost all other papers ridiculed the mass gathering. Moreover,

²⁰Leslie F. Goldstein, "The Political Thought of Frederick Douglass," Ph.D. Dissertation, Cornell University, 1974, p.88.

²¹Life and Times, p.70.

Douglass was one of the few males invited to the convention and the only male asked to make a speech. He was instrumental in pushing Elizabeth Cady Stanton to demand woman suffrage during the convention. When Stanton proposed the resolution, "Douglass asked for the floor and delivered an eloquent plea in behalf of woman's right to elective franchise."²² Later that month, Douglass gave his full support to "the grand movement for attaining the civil, social, political, and religious rights of women."²³ In so doing, Douglass marked himself not only as an abolitionist, but also as an equal rights activist for all members of society.

While following Garrison in the general theory of the abolition and women's movement, Douglass differed in his views on the founding fathers' words in the Constitution. Where Garrison argued that the framers' actions nullified the high-minded words of the Constitution, Douglass maintained that the words held intrinsic moral value. Eventually, Douglass's need to determine the real value of the Constitution instead of discarding it created a rift between Douglass and Garrison. By 1851, Douglass had decided "to learn the intentions of those who framed the Constitution in the Constitution itself."²⁴ He consistently relied on the text of the Constitution to determine its true intent. Douglass believed that despite their own self interests,

²²Phillip S. Foner, ed., Frederick Douglass on Women's Rights (Westport, Connecticut: Greenwood Press, 1976), pp. 12-14 (Herein-after cited as F.D. on Women's Rights).

²³North Star, July 28, 1848.

²⁴Goldstein, p. 110.

the framers would produce a document which would express their actual egalitarian beliefs. He viewed their compromise as moral; their practices became immaterial. Douglass gradually accepted the Constitution as an anti-slavery agent citing as proof "the completeness with which [the framers] have excluded every word sanctioning the right of property in man."²⁵ Increasingly, his anti-slavery arguments advocated a "correct" interpretation of the Constitution, one which recognized that the document presented a moral guide for America. Douglass argued that slavery was illegal under divine law and "according to the higher law of American mortals as enshrined in their own Constitution."²⁶ Douglass's interpretation of a "higher law" Constitution would be tested quickly in the decade that followed.

While Douglass had formed his own Constitutional views by the 1850's, these views were not consistent with the opinions and practices of the Supreme Court and its justices. Believing in the moral superiority of the Constitution, Douglass repeatedly attempted to convince Americans to follow the moral guide of the founding fathers. However, the Supreme Court's decision in the Dred Scott case (1857) conflicted sharply with Douglass's beliefs and, in essence, gave Constitutional backing to the pro-slavery argument. In a speech delivered at the anniversary of the American Abolition Society in New York on May 14, 1857, Douglass reacted vehemently to the Court's decision that "the black man had no rights that the white man was bound

²⁵North Star, April 8, 1853.

²⁶Goldstein, p. 119.

to respect, and that Congress had no power to abolish or prevent slavery in any of the territories."²⁷ Douglass's reaction was based both on religious principles and the moral inadequacy of government leaders.

In this speech, Douglass asserted his belief in the natural rights ordained by God. Speaking of the right to liberty, he argued that "the voices of nature, of conscience, of reason, and of Revelation, proclaim it as the right of all rights, the foundation of all trust, and of all responsibility."²⁸ Douglass realized that Scott's rights as a human being were denied by the Court's decision. He argued, though, that "to decide against this right in the person of Dred Scott, or the humblest and most whip-scarred bondsmen in the land, is to decide against God. It is open rebellion against God's government."²⁹ Douglass subtly compared Scott to the "whip-scarred" Christ and implied that by denying Scott his rights the Court, especially Justice Taney, was defying God. He argued that "the Supreme Court of the United States is not the only power in this world. It is very great, but the Supreme Court of the Almighty is greater."³⁰ To Douglass, the Dred Scott decision represented a turning away from a divine plan.

²⁷Frederick Douglass, p. 154.

²⁸"On the Nature of the Constitution," Frederick Douglass Papers, Reel 14, p.32, Manuscript Division, Library of Congress, Washington, D.C. (Hereinafter cited as Douglass Mss.).

²⁹Ibid.

³⁰Ibid., p. 31.

Douglass recognized this failure as the "moral blindness of the American people."³¹ Believing that he possessed a superior moral insight, Douglass argued that the Constitution provided for civil liberty if only the American people could recognize its potential. He stated:

It is clearly not because of the peculiar character of our Constitution that we have slavery, but the wicked pride, love of power, and selfish perverseness of the American people. Slavery lives in this country not because of any paper Constitution, but in the moral blindness of the American people, who persuade themselves that they are safe, though the rights of others may be struck down.³²

Douglass went on to argue that Justice Taney's decision in the Dred Scott case not only violated the Constitution's spirit, but also was a product of willful manipulation of the document. Douglass criticized Garrison as well for his ambivalence toward the decision. Garrison believed that by dissolving the Union, the decision and the Court which issued it would dissolve as well. He regarded the decision as another tenet in the pro-slavery argument of the Constitution. He pointed out "that the Constitution is, after all, precisely what it is declared to be by the Supreme Court."³³ Garrison advocated destruction of the document's force rather than enforcement of it. Douglass denounced both Taney and Garrison, saying:

³¹Ibid., p. 36.

³²Ibid.

³³Goldstein, p. 121.

The American people have made void our Constitution by just such traditions as Judge Taney and Mr. Garrison have been giving to the world of late, as the true light in which to view the Constitution of the United States. I shall follow neither. It is not what Moses allowed for the hardness of heart, but what God requires, ought to be the rule.

It may be said that it is quite true that the Constitution was designed to secure the blessings of liberty and justice to the people who made it, and to the posterity of the people who made it, but was never designed to do any such thing for the colored people of African descent.

This is Judge Taney's argument, and it is Mr. Garrison's argument, but it is not the argument of the Constitution. The Constitution imposes no such mean and satanic limitations upon its own beneficent operation. And, if the Constitution makes none, I beg to know what right has any body, outside of the Constitution, for the special accommodation of slaveholding villainy to impose such a construction upon the Constitution.³⁴

Initially, Douglass refrained from attacking the Supreme Court itself and focused his attention on individuals within the system, like Justice Taney. He cited their lack of a moral sense as a corrupting force within the constitutional framework. It was up to the American people to stop corruption within the system. Douglass "stressed that the American people must 'reform the national heart, quicken the national conscience, root out wicked prejudices, abolish evil practices, and destroy the great moral evils'--slavery and racism--then stalking the land."³⁵ With the onset of the Civil War, Douglass hoped that, in the turmoil of the war, society would develop a social consciousness.

This moral consciousness for which Douglass fought appeared manifest, at least on paper, in Abraham Lincoln's Emancipation Proc-

³⁴Douglass Mss., Reel 14, pp.45-46.

³⁵Martin, p. 169.

lamation. Douglass realized, however, that neither the Emancipation Proclamation nor the War took satisfactory steps to ensure black rights. The Proclamation only freed those slaves "within any state, or designated part of a state, . . . in rebellion against the United States."³⁶ It said nothing of slaves in the border states or occupied areas. Blacks were left in a political limbo. If there had been a difficulty in defining one's self as a slave, blacks now faced the problem of being "half slave and half free."³⁷ Douglass, however, saw beyond the immediate impact of the Proclamation and used its words to advocate total abolition. He took it "for little more than it purported, and saw in its spirit a life and power far beyond its letter. Its meaning to me [he said] was the entire abolition of slavery, and I saw that its moral power would extend much further."³⁸ Douglass also realized that "the mere abolition of slavery is not the end of the law for the black man."³⁹ As non-citizens, blacks were forced to fight for political recognition. The refusal to acknowledge blacks politically became increasingly difficult as more and more blacks began fighting for the Union cause in the War. Citizenship became their due. Realistically, perhaps, Douglass did not expect perfect social equality. Rather, he wanted blacks to "live under the

³⁶John Hope Franklin, The Emancipation Proclamation (New York: Doubleday & Company, Inc., 1963), p. 50.

³⁷Life and Writings, Vol. IX, p. 360.

³⁸Franklin, p.143.

³⁹John W. Blassingame ed., The Frederick Douglass Papers, Vol. 3 (New Haven: Yale University Press, 1985), p. 575.

same skies, brave the same climates, and enjoy Liberty, equality and fraternity in a common country."⁴⁰ Douglass argued that more was necessary for true black freedom than just the Proclamation. In the decades after the War, Douglass would realize just how much more.

Douglass and his fellow abolitionists' concern for black rights was directed toward the fight for passage of the Thirteenth, Fourteenth, and Fifteenth Amendments to the Constitution. Waldo Martin argues that, for Douglass, "mere secular reform would not suffice; social reform also had to enhance society's moral character."⁴¹ Fearful that the unwritten law of social attitudes would override the Emancipation Proclamation, Douglass demanded further education and legislation. He compared the plight of the blacks to a disease among the white society which had to be eradicated. As an editorial in Freedom's Journal in 1828, stated:

Educate our youth and you remove the moral infection that exists among the lower classes of our people---you elevate the intellect and excite an oppressed and injured people, to honourable and successful endeavors after virtue and competency.⁴²

Douglass increasingly stressed the need to eradicate this "moral infection." The problem Douglass faced in protecting black rights centered on the original differences between black reformers and their white counterparts. Black reform was based on traditions and

⁴⁰Ibid., p. 584.

⁴¹Martin, p. 168.

⁴²Ibid., p. 169.

histories of subjugation and impoverishment, while white social reform was based on maintaining the status quo. As Martin explains:

The tradition of black social reform paralleled and dovetailed that of white social reform. The conflict between black social progress and white racism perpetuated and sometimes widened the gulf between the two traditions. Douglass's philosophy and pursuit of social reform drew upon both traditions attempting, in the process, to overcome the differences between them and to unite them.⁴³

In order to establish a basis for "moral suasion" among blacks, Douglass sought to create a central moral guide for blacks to follow. This firm moral base would give them the power to defend themselves and fight for their rights. Douglass's founding of the New National Era, on January 27, 1870, he believed, would achieve this purpose:

Such a journal, published from week to week in the capital of the nation, inspiring its readers with manly sentiments, ennobling aspirations, reflecting the highest intellectual and moral resources of the colored people, will serve as a pillar of cloud by day and a pillar of fire by night.⁴⁴

Douglass believed that the need for a concentrated effort to protect black rights under the Constitution was so great that all other causes must be subordinated to it. In an article in the Independent in 1868, he commented: "Times change and new issues arise; men appear and disappear; but evermore the same old principles of good and evil, liberty and slavery, summon their respective votaries to the con-

⁴³Ibid., p. 165.

⁴⁴Life and Writings, Vol. IX, p.221.

test."⁴⁵ To Douglass, the urgent necessity of the black reform movement was an ongoing struggle of his race.

Because he viewed white injustice as a factor preventing the survival of American blacks, Douglass soon cast off the women's movement in hopes of directing his full attention to the cause of blacks. In a letter to reformer Josephine Griffing, he explained:

I am now devoting myself to a cause not more sacred, certainly more urgent, because it is life and death to the long enslaved people of this country; and this is: Negro suffrage . . . As you very well know, woman has a thousand ways to attach herself to the governing power of the land and already exerts an honourable influence on the course of legislation.⁴⁶

The Fourteenth Amendment which had guaranteed blacks "equal" rights and citizenship had no impact in Douglass's eyes if blacks were not allowed the right to vote. Living with the constant reminder of the conditions of slavery, Douglass perceived that black suffrage was needed to protect their rights. He viewed his struggle for black voting rights as a struggle for survival, while the women's movement contained no such urgency. This conflict, so closely linked to his personal struggle to better himself and define his "self" in concrete realities, becomes clearer in Douglass's address to the American Equal Rights Association Convention in New York on May 12, 1869:

I must say that I do not see how any one can pretend that there is the same urgency in giving the ballot to woman as to the negro. With us, the matter is a question of life

⁴⁵Ibid., p. 209.

⁴⁶F. D. on Women's Rights, p. 86.

and death, at least in fifteen states of the Union. When women, because they are women, are hunted down through the cities of New York and New Orleans; when they are dragged from their houses and hung upon lamp-posts; when their children are torn from their arms, and their brains dashed out upon the pavement; when they are objects of insult and outrage at every turn; when they are in danger of having their homes burnt down over their heads; when their children are not allowed to enter schools; then they will have an urgency to obtain the ballot equal to our own.⁴⁷

Douglass would later return to the women's movement, but not until well after the passage of the Fifteenth Amendment and well after his fight to protect the members of his race became a larger social concern.

Shortly after the proclamation of the Fifteenth Amendment in March, 1870, Douglass editorialized on the need for enforcement of black rights in the New National Era. He commented, "The pen is often mightier than the sword and the settled habits of a nation mightier than a statute."⁴⁸ Never had Douglass been so correct in his assessment of the white society. While blacks had been given voting rights under the Constitution, little was being done to ensure that they were actually allowed to vote. Douglass noted, "It is no unreasonable impeachment to say that the American people, and even the American churches, are far in the rear of American law in respect to the Negro."⁴⁹ To Douglass, the passage of the civil rights amendments was not enough. He realized that while the Constitution stood as a moral

⁴⁷Ibid., p. 87.

⁴⁸New National Era, October 6, 1870.

⁴⁹Ibid.

document for Americans to revere and respect, it could not dictate actual behaviors of citizens. The moral quality of the Constitution demanded a moral public, or at the very least a moral government. In his "Demands of the Hour" editorial, on April 6, 1871, Douglass noted:

If ever there was a time when the friends of Republican government, in accordance with the principles now happily embodied in the organic law of the land should lay aside all personal considerations and act firmly, unitedly, and with determined energy for the enforcement of the Constitution and the laws in every part of the American Union, that time is now.⁵⁰

Douglass began to realize that the Constitution could not stand alone as a moral force in the nation. While slaveholders had willingly wrapped themselves in the document before the war, they now examined it ever so closely to find loopholes, questions, and ambiguities. Douglass admitted that "pen, ink, and paper liberty are excellent when there is a party behind it to respect and secure its enjoyment. Human laws are not self-executing." But, "in the hands of a party, which considers them null and void," Douglass noted, "[they] will stand but little chance of execution."⁵¹ Douglass's fear that blacks could be forced to live in conditions comparable to slavery despite their "freedom" moved him to push for additional civil rights legislation. Douglass demanded civic as well as political equality for blacks.

With the passage of the Civil Rights Act of 1875, Douglass believed that perhaps this equality had finally been won. The act guaranteed

⁵⁰New National Era, April 6, 1871.

⁵¹New National Era, August 10, 1871.

equal enjoyment for blacks of most public accommodations, including equal access to "inns, public conveyances on land and water, theaters, and other places of public amusement." More importantly it punished offenders who must "forfeit and pay the sum of five hundred dollars to the person aggrieved."⁵² The act finally put tangible political power in the hands of blacks. Douglass called upon the entire nation to uphold to the high moral quality of the act and the Constitution of which it was a part. His call, however, went unanswered.

In the decade that followed the passage of the Civil Rights Act, Douglass increasingly relied on a stricter interpretation of the Constitution. In calling for the passage of the civil rights legislation, Douglass had demanded that Congress, as its Constitutional duty, should defend black rights. He argued, "We are not free. . . . The amendments are excellent but they need to be enforced. The result intended to be reached by the nation has not been reached. Congress has neglected to do its full duty."⁵³ But seven years after the Civil Rights Act had been passed, Douglass was still demanding Congressional action. The Constitution provided that Congress could enforce the Amendments by proper legislation. Douglass called for Congressional action in every avenue of black life. In his speech on the occasion of the twenty-first anniversary of Emancipation in the District of Columbia, April, 1883, Douglass reacted vehemently to Congress's passivity:

⁵²United States Statutes at Large, Vol. XVIII, Part 3, March 1, 1875, pp. 335-336.

⁵³Life and Writings, Vol. IX, p. 299.

The amendments to the Constitution mean this [full citizenship for blacks], or they are cruel, scandalous and colossal sham, and deserve to be so branded before the civilized world. What Abraham Lincoln said in respect of the United States is as true of the colored people as of the relations of those States. They cannot remain half slave and half free. You must give them all or take from them all. Until this half-and-half condition is ended there will be just ground for complaint. . . . Until the public schools cease to be caste schools in every part of our country, this discussion will go on. Until the colored man's pathway to the American ballot box, North and South, shall be as smooth and as safe as the same is for the white citizen, this discussion will go on. . . . Until the courts of this country shall grant the colored man a fair trial and a just verdict, this discussion will go on. . . . Until the American people shall make character, and not color, the criterion of respectability, this discussion will go on.⁵⁴

Douglass strongly believed that the discussion would go on. But in 1883, the Supreme Court abruptly ended much of Douglass's debate with the American society by nullifying the Civil Rights Act of 1875. In so doing, the Court reversed much of the work of Douglass and other equal rights activists. As might be expected, this decision drastically altered Douglass's views on the Constitution and its power.

Douglass recognized the nullification of 1883 as a moral failure of society. The Constitution, as a moral document, could not withstand the pressures of an immoral society. To Douglass, the Constitution could no longer be upheld because the Republican party had turned its back on black Americans. Besides not upholding the spirit of the Thirteenth, Fourteenth, and Fifteenth Amendments, the party had failed to pass an Election Reform Bill, the Lodge Force Bill

⁵⁴Ibid., pp. 360-361.

(which would oblige the President to protect citizens' rights in the South through the use of federal troops), and the Blair Educational Bill (which would provide for federal aid to education).⁵⁵ The Democrats were even worse. With regard to President Cleveland and his administration, Douglass remarked, "The Constitution which he has solemnly sworn to support and enforce is under the feet of the mob."⁵⁶ Moreover, Douglass abandoned his earlier policy of not attacking the Court. In a speech given at the Civil Rights Mass-Meeting, in Washington, D.C., on October 22, 1883, Douglass blasted the Court:

It has utterly ignored and rejected the force and application of object and intention as a rule of interpretation. It has construed the Constitution in defiant disregard of what was the object and intention of the adoption of the Fourteenth Amendment. It has made no account whatever of the intention of and purpose of the Congress and the President in putting the Civil Rights Bill upon the Statute Book of the Nation. . . . O for a Supreme Court which shall be as true to the claims of humanity as the Supreme Court formerly was to the demands of slavery!⁵⁷

Douglass realized that an increasing number of obstacles were being constructed in the path of black equality. Each one was a moral setback for the American people.

Douglass also viewed the resurgence of Democratic leadership within the national government as a failure of American morality.

⁵⁵Martin, p. 85.

⁵⁶Douglass Mss., Reel 14, p. 32.

⁵⁷Life and Writings, Vol. IX, p. 400.

In a speech given in 1885, Douglass compared the return of the Democratic party to Hamlet's reaction to his father's ghost.⁵⁸ Douglass was afraid that the specter of the Democratic party would once again haunt the nation. He believed that "the life of this nation is secure only while the nation is honest, truthful and virtuous."⁵⁹ The resurgence of Democratic power did not offer much hope.

Like the rise in Democratic leadership, the "unconstitutional" actions of the southern courts also disillusioned Douglass. He admitted that the decision of 1883 had "inflicted a heavy calamity upon seven millions [sic] peoples of this country, and left them naked and defenseless against the action of a malignant, vulgar, and pitiless prejudice from which the Constitution plainly intended to shield them."⁶⁰ Without the protection of the Constitution, Douglass saw how this prejudice could actively work against blacks in the southern courts. Douglass described the typical court as "a lynching mob":

⁵⁸Life and Writings, Vol. IX, p. 414. The following is the Shakespearean passage to which Douglass referred in his oration:

Tell why thy canonized bones, hearsed in death,
 Have burst their cerements; why the sepulchre,
 Wherein we saw thee quietly inurn'd,
 Hath oped his ponderous and marble jaws to cast thee up again.
 What may this mean, that thou, dead corpse,
 Again in complete steel, revisit'st thus the glimpses of the
 moon,
 Making night hideous, and we, poor fools of nature,
 So horridly to shake our disposition
 With thoughts beyond the reaches of our souls?

⁵⁹Ibid., p. 400.

⁶⁰Life and Times, p. 545.

This mob takes the place of 'due process of law,' of judge, jury, witness, and counsel. It does not come to ascertain the guilt or innocence of the accused, but to hang, shoot, stab, burn, or whip him to death. Neither courts, jails, nor marshals are allowed to protect him.⁶¹

He was forced to ask, "Where are the defenders of the Constitution?" and admit "they all confess themselves powerless to protect our class." In his speech on "Southern Barbarism" presented in Washington, D.C. in 1886, Douglass attacked the failure of the courts emotionally, "Do you ask me why I expend my time and breath in denouncing these wholesale murders when there is no seeming prospect of a favourable response? . . . how can any man with a heart in his breast do otherwise, when, . . . the blood of his fellow men cries from the ground?"⁶²

Douglass's frustrated response to the question of the southern court system initiated a fundamental change in his Constitutional philosophy. He became increasingly skeptical of the possibility of enforcing moral legislation within an immoral society. Douglass argued on the nature of the Constitution at the twenty-fourth anniversary of the Emancipation Proclamation in 1886:

I now undertake to say that neither the Constitution of 1789, nor the Constitution as amended since the war, is the law of the land. That Constitution has been slain in the house of its friends. So far as the colored people of the country are concerned, the Constitution is but a stupendous sham, a rope of sand, a Dead Sea apple, fair without and foul within; keeping the promise to the eye and breaking it to the heart. The Federal Government, so far as we are concerned, has abdicated

⁶¹Life and Writings, Vol. IX, p. 432.

⁶²Ibid., p. 433.

its functions, and abandoned the objects for which the Constitution was framed and adopted; and for this I arraign it at the bar of public opinion, both of our own country and that of the civilized world. I am here to tell the truth and to tell it without fear or favor; and the truth is that neither the Republican party, nor the Democratic party, has yet complied with the solemn oath, taken by their respective representatives, to support the Constitution, and execute the laws enacted under its provisions. They have promised us law, and abandoned us to anarchy; they have promised us protection and given us violence; they have promised us fish and given us a serpent.⁶³

As far as the black population was concerned, stated Douglass, "there is no Government or Constitution of the United States."⁶⁴

Douglass now viewed the Constitution as a document living beyond its means. While it contained the basis for a moral legal code, the Constitution could not be upheld for blacks in a white-dominated society--not as long as racial prejudices and bitter sectional differences still existed in the United States. But Douglass had fought too hard and too long to give up completely. If he could not change the actions of the Constitutional government from without, then he would change them from within. Douglass called for increasing political participation by black voters, believing that the only way to achieve political and civil equality was to influence local and national governments. He argued that the "persistent exclusion [of blacks] from office as a class is a great wrong, fraught with injury, and ought to be resented and opposed by all reasonable and effective means in our power." He concluded that the black population "shall

⁶³Douglass Mss., Reel 14, p. 18.

⁶⁴Life and Writings, Vol. IX, p. 390.

never cease to be a despised and persecuted class while we are known to be excluded by our color from all important positions under the government."⁶⁵ Douglass continued to identify black Americans as a chosen people. He believed that their inherent moral fortitude would uphold the Constitution if they were given the chance. Waldo Martin, in analyzing Douglass's call for black power, asserts, "Individual black success, he believed, would redound to the glory of the race, thereby making blacks as a group more palatable to whites. If the black population could follow his example as a moral politician within a corrupted system, then they too could overcome the transgressions of the white political power."⁶⁶

To unite blacks and sympathetic whites against the white-dominated political hierarchy, Douglass pointed to the violent lynchings of blacks and emphasized their position as an oppressed class. He questioned the workings of the Constitution, wondering, "What is the special charge by which this ferocity is justified, and by which mob law is excused and defended even by good men North and South?" Douglass complained that such a charge is not against the individual, but a "charge constructively against the coloured people as such. It throws over every man of colour a mantle of odium, and sets upon him a mark of popular hate."⁶⁷ In his "The Lesson of the Hour" pamphlet of 1894, Douglass came to terms with the problem of Negro lynching. His

⁶⁵Ibid., p. 392.

⁶⁶Martin, p. 281.

⁶⁷Life and Writings, Vol. IX, p. 493, p. 495.

rhetoric compared the struggle for black freedom to the struggle for freedom by the colonists in the Revolution. He stated:

But could I be heard by this great nation, I would call to mind the sublime and glorious truths with which, at its birth, it saluted and started a listening world. Its voice, then, was as the trump of an archangel, summoning hoary forms of oppression and time honored tyranny, to judgement.⁶⁸

Douglass asserted that the defenders of black rights were a moral and upright force. His apocalyptic vision reemphasized his stance that black Americans would one day be victorious. The Constitution could only be saved by a righteous and virtuous public. Douglass believed that this moral base could stem from the black masses because of their history as an oppressed class.

Douglass also realized the potential of the women's rights movement to further the development of a moral public. As a firm believer in the high moral quality of women, he returned to the women's movement in an attempt to redefine the moral character of the American body politic. He originally had concluded that the fight for women's suffrage would be an obvious continuance of the Thirteenth, Fourteenth, and Fifteenth Amendments. It would be just a matter of time before a Sixteenth Amendment for women's suffrage would be passed by Congress. As early as 1870, Douglass wrote in The New Era, "Now that the fifteenth amendment is a finality, . . . let the colored women be prepared when the sixteenth amendment becomes law to co-operate in

⁶⁸Ibid., p. 523.

the various schemes which will be presented to their favor."⁶⁹ In speaking of the violence associated with previous male-dominated governments, Douglass argued:

While it may not be contended that the introduction of the feminine element in government would entirely cure this tendency to exalt might over right, many reasons can be given to show that woman's influence would greatly tend to check and modify this barbarous and destructive tendency.⁷⁰

The morality of the nineteenth century woman became increasingly important to Douglass as he sought a moral public to reignite the spirit of the Constitution. Douglass made his formal return to the women's rights movement by speaking before the Woman Suffrage Association's Annual Convention in 1888. Of the American woman he declared, "This is her day in court." But Douglass firmly believed that by giving women the right to vote he would improve his own position and the position of other blacks in society. In his speech he argued, "The benefits accruing from this movement for the equal rights of woman are not confined or limited to woman only. They will be shared by every effort of mankind everywhere and in all ages."⁷¹ He went on to emphasize a few weeks later the necessity of including women in republican forms of government:

If women are equally virtuous with men, if the whole is greater than a part, if the sense and sum of human goodness in man and woman combined is greater than in that of

⁶⁹F.D. on Women's Rights, p. 92.

⁷⁰Ibid., p. 107.

⁷¹Ibid., p. 110, p. 114.

either alone and separate, then the government that excludes women from all participation in its creation, administration, and perpetuation, maims itself, deprives itself of one-half of all that is wisest and best for its usefulness, success, and perfection.⁷²

Just as the exclusion of blacks hampered true republicanism, the exclusion of women from public life made the political process in the United States fall short of its potential.

In February, 1895, Douglass made the last speech of his life before the National Council of Women in Washington. Shortly after his return home to Cedar Hill, Douglass dropped to the floor and died. That evening, Mary Wright Sewall closed the Council with these words:

Surely it will be regarded as an historic coincidence that the man who, in his own person, embodied the history of almost a century, in the struggle between freedom and oppression, should spend his last day as a witness of the united efforts of those who have come from so many different places and along such various avenues, to formulate some plan upon which they may unite to demand a new expression of freedom in the relation of woman to the world, to society, and to the state; and in the application of women's brain and conscience to the great questions pending at this hour.⁷³

The great questions of the hour still revolved around the equality of rights and Constitutional interpretation of those rights. Blacks and women, though, now had the experience of Douglass's life, his endless crusade to seek truth within the Constitution, as ammunition against the dominant white male society.

⁷²Ibid., p. 124.

⁷³Frederick Douglass, p. 366.

The "ammunition" that Douglass produced through the political theorizing which occupied so much of his life, however, also highlighted a number of Constitutional dilemmas, if not for his generation, then at least for the generations to come. Douglass's constant process of redefinition of both the Constitution and its interpretative procedures raised questions regarding the enforceability of the Constitution, the interpretation of a Constitution which can change through time, and the crucial importance of a moral public to support the Constitution.

Douglass constantly fought for the enforcement of his rights under the Constitution. Douglass also realized, however, that legislation was not a sufficient means to enforce previous legislation. In one of his autobiographies, The Life and Times of Frederick Douglass, Douglass admitted that in the South "the law of the land cannot command obedience, the ballot box cannot be kept pure, peaceable elections cannot be held, [and] the Constitution cannot be enforced."⁷⁴ In an editorial in the New National Era, he commented that "a universal acquiescence in, and application of, the principles of freedom will result in a complete pacification of all sections of the country."⁷⁵ Douglass realized that the Constitution could not, as he said, be "self-executing." And yet it did serve as the supreme law of the land. Douglass recognized the widening gap between paper

⁷⁴Life and Times, p. 435.

⁷⁵Life and Writings, Vol. IX, p. 236.

doctrine and everyday reality. The Constitution could only be enforced if those under it wished its values to supercede all others.

Another dilemma which arose within Douglass's Constitutional philosophy revolved around the process of interpretation. Douglass constantly sought to determine the founding fathers' true intentions, not through their actions but through the words of the Constitution. Leslie Friedman Goldstein, in her dissertation on "The Political Thought of Frederick Douglass," says, "Douglass had explained the omission of explicit references to slavery in the Constitution as an indication that its Framers were ashamed of their 'peculiar institution'."⁷⁶ He explained that somehow the framers were enough removed from everyday experience to make a document which could stand for the true law of the land. Even if such a displacement of thought were possible, Douglass refuted this possibility in his analyses of his life and in the constant revisions of his Constitutional philosophy. He admitted that "a man's character always takes its hue, more or less, from the form and color of things around him." The development of his Constitutional philosophy--the initial break with Garrison, the need for enforcement of basic rights, and his eventual disillusionment with not only the power of the Constitution but also the American public--can all be traced back to his earlier experiences as a child or with his complex definition of "self" which he espoused. Douglass could be black, fatherless, impoverished, and half-white; he could be ex-slave, diplomat, politician, and orator. But he could not be

⁷⁶Goldstein, p. 104.

solely one characteristic at one time. He was as much a slave to his past as he was when he actually served the "Old Master." Although he claimed to be finding the framers' true intentions, he found their intentions mixed with his own desires to attain freedom and greatness.

Douglass's interpretations of the Constitution, though, should not be construed as false or misleading. Certainly, Douglass awakened much of the American political society to the need for constitutional review. The problem arises with the knowledge that Douglass's past, his history as a half-white ex-slave orator and activist, affects his interpretation of the law. His life experience raises the question, "Can there ever be one interpretation of the Constitution which is not constantly revised or reviewed by personal experience?" Certainly there could be as many interpretations of the Constitution as there are histories of people in the United States. With the Supreme Court in the role of interpreter, Douglass did not see the problem as resolved. The Court too often reverses decisions, as in the nullification of 1883, changing inherent laws of human rights from decade to decade (Ironically, the Court would eventually nullify its nullification and return to its original stance). The Constitution, then, should be construed not as a historical document, but as one constantly defined in the present.

Inherent in this definition of the Constitution, according to Douglass, is its intrinsic moral value. Douglass, in his later life, though, realized that a moral document demanded a moral public, or at least, a unified system of beliefs. He believed that the "moral" Constitution did not recognize race and neither should the American

public. Waldo Martin describes the result as the formation of a "composite American nationality." In a speech titled "Exordium," Douglass commented,

You and I were not sent into the world to preserve our color, but to be intelligent, upright, industrious, and prosperous men and women--in a word to make the wisest and best possible use of our powers and opportunities. Color will take care of itself now and in times to come. We are surrounded by a civilization which is the accumulation of ages. . . . It belongs to no people or nation exclusively. It does not belong to the white man. It does not belong to the black man.⁷⁷

This was the moral public which Douglass envisioned, a public which did not recognize race but constantly sought to affirm humanity. This public did not develop during Douglass's lifetime, and most critics would argue that it still has not graced American society (Forsythe County, Georgia, is proof of that). How then should a Constitution be invoked when it lacks the moral public necessary for its enforcement? If the Constitution does hold intrinsic value as a moral document then the American political scene should seek to emulate that morality.

The problems that Douglass faced in dealing with the Constitution, both as an ex-slave and as a free man, are inherent in any quest for truth. Douglass's struggle both to forget and affirm his blackness culminates in his philosophy regarding the Constitution. He sought to bring order out of disorder--in both his own life and the lives of his fellow blacks. On his death, the London Daily News ran

⁷⁷Martin, p. 195.

the following editorial:

From first to last his was a noble life. His own people have lost a father and a friend, and all good men have lost a comrade in the fight for legal emancipation of one race and the spiritual emancipation of all.⁷⁸

In many respects, he became the spiritual father of American blacks in their fight for freedom, the father that he never had. He provided the same power and security which he so ardently sought within the framework of the Constitution, his artificial father figure. The Constitution, to Douglass, could protect all and defend all. As his legacy, he left the document's words in the hands of the American people "to secure the blessings of liberty" to all citizens of the United States.

⁷⁸Frederick Douglass, p. 326.

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