



FREDERICK DOUGLASS ON THE RIGHT AND DUTY TO RESIST

Nicolas Buccola, a professor of political Science at Linfield College, discusses the moral problem [Frederick Douglass](#) raised in the 1850s about the justice of using violence to resist the evil of slavery. Douglass was radicalized both by his own experience of being a slave and using violence against a notorious “slave breaker,” as well as by the passage of the [Fugitive Slave Act of 1850](#) and how to oppose the state-sanctioned policy of kidnapping runaway slaves and returning them to their “owners.” Buccola points to a number of troubling aspects about Douglass “robust conception of duty to vindicate the natural rights” of slaves, especially as it relates to the present time. He is joined in the discussion by Helen J. Knowles is an assistant professor of political science at the State University of New York at Oswego, Peter C. Myers Professor of Political Science, University of Wisconsin-Eau Claire, and the independent scholar George H. Smith.

FREDERICK DOUGLASS ON THE RIGHT AND DUTY TO RESIST

by Nicholas Buccola

When Frederick Douglass was a teenager, he was sent by his master, Thomas Auld, to live on the farm of an infamous “slave-breaker” named Edward Covey.^[1] After being subjected to many brutal beatings at Covey’s hands, Douglass attempted to convince his master to intervene. In order to do so, he appealed to Auld’s sense of morality, his professed Christianity, and even the self-interest he had in protecting Douglass as “[his property](#).”^[2] Auld was unmoved by these arguments and sent Douglass back to Covey’s farm, a place aptly called “Mount Misery.”

Soon after his return to Mount Misery, Douglass decided that the next time Covey attacked him, he would “defend and protect” himself. And so, when the “[snake-like](#)” [Covey](#) snuck up on and attempted to attack Douglass, the young slave resisted in a manner that he described as “strictly...*defensive*, preventing him from injuring me, rather than trying to injure him.”^[3] After battling with

Covey for two hours, Douglass claimed he had not shed a single drop of blood, while Covey slithered off, bloody and humiliated.

In Douglass’s second autobiography, *My Bondage and My Freedom*, he identified his fight with Covey as a “turning point” in his “*life as a slave*” that, in his words, “rekindled in my breast the smoldering embers of liberty” and “revived my sense of manhood.” For Douglass, the fight with Covey was nothing less than a rebirth: “I was a changed being after that fight. I was *nothing* before; I WAS A MAN NOW.” From this personal transformation Douglass drew moral conclusions:

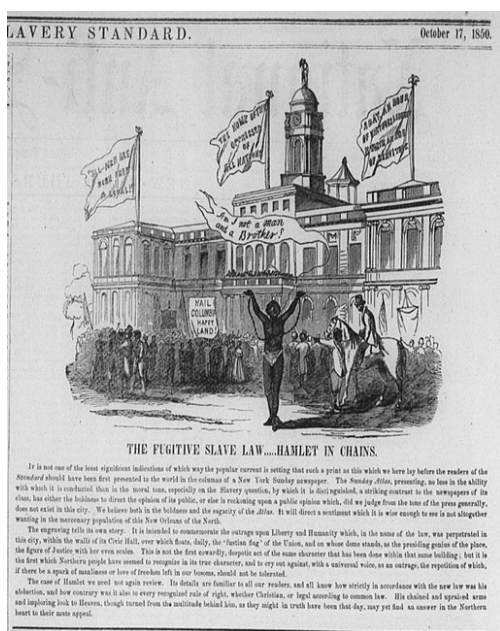
“[A man without force, is without the essential dignity of humanity](#). Human nature is so constituted that it cannot *honor* a helpless man, although it can *pity* him; and even this it cannot do long, if the signs of power do not arise.”^[4]

After Douglass escaped from slavery and entered the thick of abolitionist agitation, this defense of resistance would have radical implications for his political philosophy. Douglass was, fundamentally, a natural rights thinker and he argued that human beings had the right and sometimes the duty to resist those who attempt to

violate those rights. Perhaps most provocatively, Douglass took this argument a step beyond self-defense by arguing that individuals have the right and an imperfect duty to act in defense of the natural rights of other people as well.

“DOUGLASS WAS, FUNDAMENTALLY, A NATURAL RIGHTS THINKER AND HE ARGUED THAT HUMAN BEINGS HAD THE RIGHT AND SOMETIMES THE DUTY TO RESIST THOSE WHO ATTEMPT TO VIOLATE THOSE RIGHTS.”

This philosophy of natural rights and resistance was brought into relief by the Fugitive Slave Act of 1850, which was created in order to enhance and expedite the process of seizing, arresting, and returning runaway slaves. The Act was crafted to empower, deputize, and incentivize more people to participate in what Douglass called “the infernal business” of “slave-catching.” In addition, the Act created new measures meant to punish individuals who sought to provide aid and protection to runaway slaves.



Fugitive Slave Act of 1850

Needless to say, Douglass was thoroughly appalled by the Fugitive Slave Act and the controversy over the Act provided him with an opportunity to elaborate on his radical philosophy of natural rights and resistance. In 1852, the Free Soil Party held its convention in Pittsburgh, Pennsylvania. At the convention, Douglass rose to speak about the Party’s position on the Fugitive Slave Act. “The only way to make the Fugitive Slave Law a dead letter,” he said, “is to make half a dozen or more dead kidnappers.”^[5] There were many “non-resistants,” or pacifists, in the antislavery movement and when one of them called out an objection to “that doctrine,” Douglass stood his ground. Much like his reduction of Covey to the status of a “snake,” Douglass argued that individuals became “outcasts of humanity” when they chose to violate the natural rights of others: “The man who takes to office of a bloodhound,” he said, “ought to be treated as a bloodhound; and I believe that the lines of eternal justice are sometimes so obliterated by a course of long continued oppression that it is necessary to revive them by deepening their traces with the blood of a tyrant.”^[6]

Douglass’s response to the pacifist was very much in keeping with the political philosophy he had articulated about a year before in an essay called “Is Civil Government Right?” In that piece, which was written in response to the abolitionist Henry C. Wright’s claim that “just civil government” is “an impossibility,” Douglass relied on his philosophy of resistance as part of his natural rights justification of government: “when every avenue to the understanding and heart of the oppressor is closed, when he is deaf to every moral appeal, and rushes upon his fellow-man to gratify his own selfish propensities at the expense of the rights and liberties of his brother-man, the exercise of physical force, sufficient to repel the aggression, is alike the right and the duty of society.”^[7] This justification for government, it should be noted, was also the basis of the fundamental limitation on government. We should concede, Douglass argued,

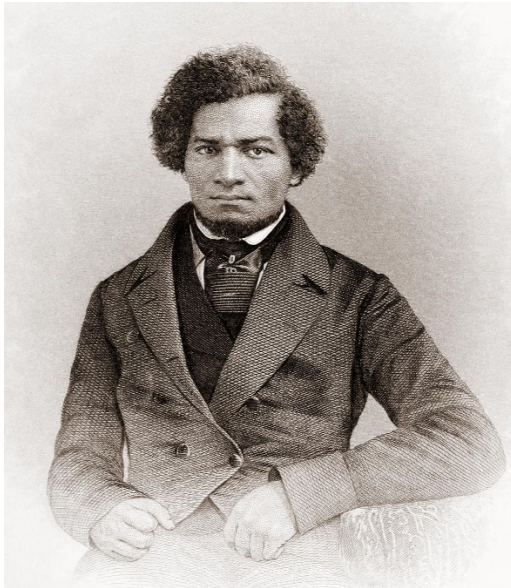
“no governmental authority to pass laws, nor to compel the obedience to any laws, against the natural rights and happiness of man.... [I]he office of government is protection; and when it

ceases to protect the rights of man, [we ought to] repudiate it as a tyrannical usurpation.”

In the 1852 Free Soil convention speech, Douglass also considered a legalist or constitutionalist counter-argument to his call to resist the Fugitive Slave Act. According to this line of argument, the Act, though abhorrent, was authorized by the Founders’ Constitution and it was duly passed by both houses of Congress and signed by the President. In response to this line of argument, Douglass infused his natural rights philosophy with a generous dose of cheekiness:

“It has been said that our fathers entered into a covenant for this slave-catching. Who were your daddies? I take it they were men, and so are you.... If they made a covenant that you should do that which they have no right to do themselves, they transcended their own authority, and surely it is not binding on you.”

Legalism and constitutionalism occupied important places in Douglass’s political philosophy, but they were always subordinate to the fundamental purpose that gives them value: the protection of natural rights. The rule of law, as Douglass had argued in his debate with Wright, is not an end in itself, but rather a means to a much higher end: “to establish justice and liberty among men.”^[8]



Frederick Douglass

Almost two years later, Douglass’s philosophy of resistance was put into practice by a group of abolitionist in Boston. A fugitive slave named Anthony Burns had been captured in Boston and a group of abolitionists plotted to liberate him from his captors. During the attempt to set Burns free, a slave-catcher named James Batchelder was shot and killed.

The Burns Affair became a source of great controversy and critics condemned those who had acted in defense of Burns’ rights. Douglass took to the pages of his newspaper to offer a full-throated defense of the radical philosophy of resistance that animated the Burns rebels. “All admit that the right to enjoy liberty largely depends upon the use made of that liberty” and Mr. Batchelder chose to use his liberty in one of the most depraved ways imaginable.^[9] When he “took upon himself the revolting business of a kidnapper,” Douglass wrote, “and undertook to play the bloodhound on the track of his crimeless brother Burns, he labeled himself the common enemy of mankind, and his slaughter was as innocent, in the sight of God, as would be the slaughter of a ravenous wolf in the act of throttling an infant.”^[10] Again, it is worth noting that Douglass saw the choice to violate the rights of others as a decision to separate oneself from, and declare war upon, humanity itself. If you act like a wild animal, Douglass declared, you deserve to be treated like one.

The Burns case reveals that Douglass’s philosophy of resistance offered more than a justification of self-defense. In addition, it highlights Douglass’s belief that we might also be justified in taking action to defend the rights of *others*. In the latter half of the 1850s, Douglass would take this radical notion a step further by arguing that we have an imperfect duty to vindicate the natural rights of others. “There is no freedom from responsibility for slavery,” Douglass would argue, “but in the Abolition of slavery.” Our duty to vindicate the natural rights of others is not a perfect one that “must be fulfilled under any circumstances” through the performance of “particular action[s].” Instead the duty to vindicate the natural rights of others is *imperfect* in the sense that it “may

be overridden” in particular circumstances and it “allows a significant degree of freedom” in how we fulfill it.^[32]



John Brown

Douglass’s commitment to the imperfect duty to vindicate the rights of others is revealed by the fact that he would emerge as one of the most vociferous defenders of John Brown, who took up arms in pursuit of abolition in “Bleeding Kansas” and at Harper’s Ferry. While many abolitionists condemned Brown’s use of force, Douglass argued that Brown had “struck the bottom line of the philosophy which underlies the abolition movement.”^[33] Brown, Douglass claimed, was acting on the same philosophy that animated him in his fight with Covey and that had inspired the men who sought to liberate Burns:

“He attacked slavery with the weapons precisely adapted to bring it to the death. Moral considerations have long since been exhausted upon the slaveholders. It is in vain to reason with them. One might as well hunt bears with ethics and political economy for weapons....”^[34]

As Douglass would put it many years later in a speech honoring Brown, he was

“our noblest American hero” because he “had evinced a conception of the sacredness and value

of liberty which transcended in sublimity that of...Patrick Henry and made even his fire-flashing sentiment of ‘Liberty or Death’ seem dark and tame and selfish. Henry loved liberty for himself, but this man loved liberty for all men.... Just here was the true glory of John Brown’s mission.”^[35]

Although Douglass viewed Brown’s raid as imprudent, he believed Brown acted on sound moral principles: in defense of the natural rights of others, he had taken on a “system of brute force” with “its own weapons.” During the summer of 1860, Douglass would make the case that Brown’s actions were but a prelude to a more widespread conflict to end slavery. “The efforts of John Brown and his brave associates,” Douglass wrote to the abolitionist James Redpath, “have done more to upset the logic and shake the security of slavery, than all other efforts in that direction for twenty years.” Brown’s actions, “though apparently unavailing,” sent a clear message to “future insurgents”: “The only penetrable point of a tyrant is the fear of death.”^[36]

A bit later that summer, Douglass would develop the ideas expressed in the letter to Redpath in an essay called “The Prospect in the Future.” In the piece, Douglass admitted that many abolitionists had reached “a point of weary hopelessness” because decades of eloquent arguments in favor of universal natural rights had failed to bring about an end to slavery. Indeed, “reason,” “morality,” “religion,” “art,” “literature,” and “poetry” had “all expended their treasures to arouse the callous hearts of the American people to the duty of letting the oppressed go free,” but millions of people remained in bondage.

“An able advocate of human rights,” Douglass wrote, “gratifies [the people’s] intellectual tastes, pleases their imaginations, titillates their sensibilities into a momentary sensation, but does not move them from the downy seat of inaction.”

After decades of writing and speaking on behalf of the slave, Douglass wondered where to turn. “Our philanthropy,” “our sense of justice,” “our religion,” and

“our politics” had failed and there was but one answer left: “The American people admire courage displayed in defense of liberty, and will catch the flame of sympathy from the sparks of its heroic fire.” Since the “higher and better elements of human nature” were “so barren of fitting response,” the time may have come, Douglass concluded, for the “use of bayonets.”^[37]

“The Prospect in the Future” is a truly haunting piece of writing. Douglass was one of the great orators and editorialists of the nineteenth century. He was deeply devoted to the notion that ideas have the power to change the world. And yet, here he was stating in no uncertain terms that the only hope left was an appeal to “mere animal instincts.”^[38] While it is difficult not to be jarred by this conclusion, upon reflection it is not all that surprising. In a sense, the argument of the essay maps almost perfectly onto Douglass’s justifications for using force against Edward Covey. After being brutalized by Covey, Douglass sought refuge by appealing to his master’s sense of justice, philanthropy, religion, and self-interest. When none of these avenues brought relief, Douglass resolved to defend himself and so he did. In the remaining six months he lived with Covey, the “slave-breaker” never laid another hand on him. This proved to be an important lesson for the young slave and it became a central part of his mature political philosophy.

The Covey example reveals Douglass’s commitment to the idea that the individual has a right to act in his own defense and his reflections on the Burns affair and John Brown’s raid reveal that he went a step or two further: individuals have the right and the imperfect duty to use force in the defense of the natural rights of others.

It is this second idea – that we have an imperfect duty to vindicate the natural rights of others – that strikes me as especially compelling *and* problematic. The idea is compelling because it infuses the natural rights philosophy with a robust ethos of social responsibility that makes the doctrine morally defensible. Someone truly committed to natural rights, on Douglass’s account, is not fulfilling his duties by simply refraining from violating the rights of other people. This is necessary, but not sufficient. In addition to this basic duty, we also have

an imperfect duty to protect the natural rights of other people. In practice, this duty proves to be quite a bit more complicated than the duty to respect the rights of others. Precisely how we act on it will be shaped by myriad considerations including those of prudence, risk, and timing. In Douglass’s own case, his sense of duty did not lead him to conclude that he ought to join Brown in his raid on Harper’s Ferry (which he thought noble, but doomed to fail) and it led him to vacillate considerably on questions of how best to behave in the sphere of electoral politics. But there seems to be little doubt that Douglass believed a general commitment to this idea was essential to any coherent philosophy of natural rights. This strikes me as a compelling and inspiring idea. Someone truly committed to natural rights is not doing enough if simply leaves people alone and turns inward; he has a duty to care about the rights of other human beings and an obligation to act in ways that will vindicate those rights whenever possible.

There are two potentially troubling things about Douglass’s robust conception of duty to vindicate natural rights. First, I worry that the duty’s imperfection may hollow it out of much meaning. In other words, the duty is so broad – its universal nature imposes on us a sense of responsibility for all human beings – and the ways of fulfilling the duty are so varied that it seems difficult to imagine how it might be realized in the world.

Second, I worry that the idea may invite a justification for extralegal violence that is far too broad. Although the ethics of the Burns affair are complicated, I suspect it is not all that difficult for most contemporary readers to find some sympathy for Douglass’s position. The Fugitive Slave Law strikes us as so patently unjust, the slave-catcher seems so obviously immoral, and the end being pursued – the liberation of Burns – seems so indubitably righteous. When we begin to imagine contemporary scenarios in which we might apply Douglass’s principle, though, we may begin to get a bit nervous. Suppose, for example, that Joe believes fetuses have natural rights and, therefore, abortion is murder. Is Joe justified in bombing an abortion clinic? Suppose Jane believes in a natural right of migration. Would she be

justified in taking up arms against agents from Immigration and Customs Enforcement when they arrive to deport her neighbor? I suspect that even the most confident natural rights thinker could be made uncomfortable if she imagined what might happen if Douglass's conception of duty was widely accepted and acted upon.

Douglass's philosophy of resistance presents us with tough questions about our natural rights and duties and he provides us with a powerful account of how he answered those questions in his own life. Douglass cannot tell us how to answer these questions for ourselves, but he does provide us with a model of what serious thinking in public looks like and we would do well to emulate him in this vital task.

Endnotes

[1.] Frederick Douglass, *Narrative of the Life of Frederick Douglass, An American Slave*, in *Autobiographies* (New York: Library of America, 1994), 54.

[2.] Frederick Douglass, *My Bondage and My Freedom*, in *Autobiographies* (New York: Library of America, 1994), 273. Online version: Frederick Douglass, *The Life and Times of Frederick Douglass: From 1817-1882, written by himself; with an Introduction by the Right Hon. John Bright*, ed. John Lobb (London: Christian Age Office, 1882). </titles/2007>.

[3.] Frederick Douglass, *My Bondage and My Freedom*, in *Autobiographies*, p. 283.

[4.] Frederick Douglass, *My Bondage and My Freedom*, in *Autobiographies*, p. 286.

[5.] Frederick Douglass, "The Fugitive Slave Law," in *The Essential Douglass*, ed. Nicholas Buccola (Indianapolis: Hackett Publishing Company, 2016), 72.

[6.] Frederick Douglass, "The Fugitive Slave Law," in *The Essential Douglass*, p. 73.

[7.] Frederick Douglass, "Is Civil Government Right?" in *The Essential Douglass*, ed. Nicholas Buccola (Indianapolis: Hackett Publishing Company, 2016), 45, 46.

[8.] Frederick Douglass, "Is Civil Government Right?" in *The Essential Douglass*, p. 48.

[9.] Frederick Douglass, "Is it Right and Wise to Kill a Kidnapper?" in *The Essential Douglass*, p. 77.

[10.] Frederick Douglass, "Is it Right and Wise to Kill a Kidnapper?" in *The Essential Douglass*, p. 78.

[32.] Nicholas Bunnin and Jiyuan Yu, *Blackwell Dictionary of Western Philosophy*, Malden, MA: Blackwell, 2004).

[33.] Frederick Douglass, "Capt. John Brown Not Insane," *Selected Speeches and Writings*, ed. Yuval Taylor, (Chicago: Lawrence Hill Books, 1999), 375.

[34.] Frederick Douglass, "Capt. John Brown Not Insane," *Selected Speeches and Writings*, p. 375.

[35.] Frederick Douglass, "John Brown," in *The Essential Douglass*, p. 77.

[36.] Frederick Douglass, "Letter to James Redpath," in *The Essential Douglass*, p. 133.

[37.] Frederick Douglass, "The Prospect in the Future," in *The Essential Douglass*, pp. 135-138.

[38.] Frederick Douglass, "Is it Right and Wise to Kill a Kidnapper?" in *The Essential Douglass*, p. 137.

THE CONSTITUTION AND "NATURAL RIGHTS" – WE KNOW THEM WHEN WE SEE THEM ..."

by Helen J. Knowles

As Dr. Buccola indicates, it is the breadth of Frederick Douglass's "robust conception of duty to vindicate natural rights" that is so troubling. It provides few guidelines and thus has the potential to justify many forms of extralegal violence simply committed in the name of defending "natural rights." One might argue that such violence is constrained by the term "natural rights"; violence *only* in the defense of "natural rights," one might say. However, that does not get us very far because of the

vagaries of the term “natural rights.” Therefore, even if one seeks to engage in “extralegal” violence, Douglass’s words and actions – especially after 1851 – suggest a need to look within the law for, at the very least, a relevant understanding of the “natural rights” that we might have a constitutional (and Constitutional) duty to defend. In the United States, this therefore means consulting the U.S. Constitution – the nation’s “supreme law.” Vis-à-vis Frederick Douglass, this seems all the more appropriate given that after 1851 he wedded himself to a belief that the Constitution did not sanction slavery – and, for all the aforementioned vagaries, I think (or would at least hope) that we can arrive at a consensus that enslaving someone is a hardcore violation of their “natural rights.”



“[A] Change of Opinion [Is] Announced”

At the 17th annual meeting of the American Anti-Slavery Society in Syracuse, NY, in May 1851, William Lloyd Garrison lashed out at what he viewed as the intellectual treachery of his former disciple Douglass. “There is roguery somewhere,” cried Garrison. The “insulting remark” came in response to Douglass’s recent announcement that he no longer subscribed to the Garrisonian interpretation of the Constitution as a “covenant with death, and an agreement with hell.”^[11] Douglass “had arrived at the firm conviction that the Constitution, *construed in the light of well established rules of legal interpretation*, might be made consistent in its details with the noble purposes avowed in its preamble; and that hereafter we should insist upon the application of such rules to that instrument, and demand that it be wielded in behalf of emancipation.”^[12]

The seeds of Douglass’s discontent with the Garrisonian position on the Constitution began to emerge, in his public writings, in early 1849, when Douglass wrote a letter to C.H. Chase, published in Douglass’s *North Star* newspaper. If “strictly construed according to its reading,” wrote Douglass, the Constitution was fundamentally an antislavery document. *However*, he still believed “that the original intent and meaning of the Constitution (the one given to it by the men who framed it, those who adopted, and the one given to it by the Supreme Court of the United States) makes it a pro-slavery instrument – such an [*sic*] one as I cannot bring myself to vote under, or swear to support.”^[13] This indication that Douglass was no longer a loyal Garrisonian lieutenant was jubilantly received by the unconstitutionality-of-slavery community. As Gerrit Smith observed in a letter that he penned in immediate response to the Douglass-Chase correspondence, these “comments ... cheer me with the hope that you are on the very edge of wielding the Federal Constitution for the abolition of American Slavery.”^[14] This observation was at once astute and overly optimistic, because Douglass would stay on the edge for two more years.^[15]

In January 1851, after three full years of immersion in the antislavery community of upstate New York, Douglass finally wrote the following in a letter to Gerrit Smith (who had replaced Garrison as a mentor):

I have thought much since my personal acquaintance with you and since hearing your reasons for regarding the Constitution of the United States an Anti-Slavery instrument, and although I can not yet see that instrument in the same light in which you view it, I am so much impressed by your reasoning that I have about decided to let Slaveholders and their Northern abettors have the Laboring *oar* in putting a proslavery interpretation upon the Constitution.^[16]

However ... Douglass’s rejection of the Garrisonian interpretation of the Constitution would not be complete until Smith answered one fundamental question. “[M]ay we avail ourselves,” wrote Douglass, “of legal rules which

enable us to defeat even the wicked intentions of our Constitution makers?" This, he continued, was the "question which puzzles me more than all others involved in the subject." In other words, Douglass wondered whether it was "good morality to take advantage of a legal flaw and put a meaning upon a legal instrument the very opposite of what we have good reason to believe was the intention of the men who framed it?"^[17] As he made clear in his private correspondence over the next few months, he was persuaded of the veracity of an affirmative answer to this question and, as a result, he was "prepared to contend for those rules of interpretation which when applied to the Constitution make its details harmonize with its declared objects in its preamble." This was an interpretation that led him to conclude that slavery was unconstitutional, a conclusion that he would talk about, and forcefully defend, in numerous speeches and writings thereafter.^[18]

The Importance of Circumstances

This does not by any means, however, solve the profound questions that still surround the concept discussed by Dr. Buccola. Ultimately, in light of his faith in the Constitution which, as social-contract theory tells us, is a compact into which "We the People" entered in order to preserve our "natural rights," how can we explain (let alone justify) what appears to be Douglass's rather robust defense of *extralegal* violence to preserve those "natural rights"? In the final section here I would suggest that the answer (as theoretically unsatisfying as it might be) lies in the importance of context and circumstances.

In the late 1840s, Douglass was moving – temporally and psychologically – further away from his personal experiences with the violence of slavery. As several scholars have observed, this move coincided with (and probably generated) an increased militancy in Douglass.^[19] The former slave could easily accept the indictment of the Constitution, and the Framers, that the Garrisonians offered.



William Lloyd Garrison

That changed as time passed. One thing that divided Garrison and Douglass was the latter's ability to realize that strictly theorizing about the relationship between slavery and the Constitution and calling for disunion, as the Garrisonians were wont to do, was a fatally flawed strategy because of the factual reality of slavery. His life in bondage had taught Douglass that moral suasion only went so far; in theory it impacted the hearts and minds of those who considered slavery a moral abomination. And the antislavery community remained a distinct minority voice. It would take the very thing that Garrison abhorred – (political) action – to get anything done. Pragmatism would not override principle; as Douglass observed in a rousing speech at the 1852 national convention of the Free Soil Party in Pittsburgh: "It has been said that we ought to take the position to gain the greatest number of voters, but that is wrong.... Numbers should not be looked to so much as right. *The man who is right is a majority.* He who has God and conscience on his side, has a majority against the universe....If he does not represent what we are, he represents what we ought to be."^[20] Yet a principled stand, alone, could not accomplish anything tangible. What was needed was a principled pragmatism. And, if we are going to defend Douglass's "conception of duty to vindicate natural rights," we cannot ignore the circumstances out of which it was born. As James Oakes

observes, Douglass “was never a very convincing pacifist.” Reflecting the violent world of slavery that he, and not Garrison, had experienced first hand, “Douglass tended to fall back on pragmatic as much as principled considerations.”^[21] I am not sure any of us can blame him for that.

Endnotes

^[11.] Philip S. Foner, ed., *Frederick Douglass: Selected Speeches and Writings (Abridged and Adapted by Yuval Taylor)* (Chicago: Lawrence Hill Books, 1999), 173-4. Douglass later wrote that “[t]here was no mistaking the meaning [of the remark]; and, coming from any one else, it would have been resented on the spot.... I do not think that the grand, old anti-slavery pioneer went to his grave thinking there was any ‘roguery’ in me. If he did, I was not alone in this bad opinion of his. No man who ever quitted the Garrisonian denomination was permitted to leave without a doubt being cast upon his honesty.” Quoted in John Ernest, ed., *Douglass in His Own Time: A Biographical Chronicle of His Life, Drawn from Recollections, Interviews, and Memoirs by Family, Friends, and Associates* (Iowa City, IA: University of Iowa Press, 2014), 101.

^[12.] Frederick Douglass, “Change of Opinion Announced (1851),” in *The Life and Writings of Frederick Douglass: Volume II Pre-Civil War Decade, 1850-1860*, ed. Philip S. Foner (New York: International Publishers, 1950).

^[13.] Letter from Douglass to C.H. Chase, February 9, 1849, in Foner, *Selected Speeches and Writings*, 128. The letter appeared in the February 9, 1849, edition of the *North Star*.

^[14.] Letter from Gerrit Smith to Frederick Douglass, February 9, 1849, in John R. McKivigan, ed., *The Frederick Douglass Papers: Series 3: Correspondence, Volume 1: 1842-1852* (New Haven, CT: Yale University Press, 2009), 356. Mariah Zeisberg has concluded that Douglass’s post-1849, non-Garrisonian, antislavery interpretation of the Constitution was based on a purely instrumental reading of that document rather than one derived from faithful scrutiny of the text. However, there is an important flaw in her analysis. She fails to acknowledge that Douglass

was drawing (appropriately – in terms of their interpretive methods) heavily on others’ arguments (such as those of Lysander Spooner) without providing a sufficiently detailed examination of those legal and logical arguments. This has the effect of making Douglass look more like an instrumentalist than he was. (Mariah Zeisberg, “Frederick Douglass, Citizen Interpreter” [paper presented at the Annual Meeting of the American Political Science Association, Chicago, IL, 2007.]) And, indeed, as Peter Myers has astutely observed,

“Commentators have commonly supposed that considerations of practical utility were more powerful than those of intrinsic persuasiveness in shaping Douglass’s post-Garrisonian constitutional arguments. It is beyond doubt that in reconsidering his opinion, Douglass was acutely aware that the issue held ‘vast importance’ for the abolitionist cause. The conviction that the Constitution was an antislavery document yielded an abolitionism that was restorationist rather than revolutionary, loyalist rather than disunionist – one capable of deploying the broadest arsenal of weapons in the war against slavery. To spread the word concerning the antislavery Constitution was vital to his effort to build an effective political antislavery coalition.... *But all parties to the dispute over the Constitution saw practical utility in their readings, and to discover the utility in any one of them is not to discredit its claim to interpretive respect.*” (Peter C. Myers, *Frederick Douglass: Race and the Rebirth of American Liberalism* [Lawrence, KS: University Press of Kansas, 2008], 89 [italics added].)

^[15.] As two articles penned in the Spring of 1849 indicated. The first of these articles was an extensive *North Star* editorial published on March 16, in which Douglass clarified what he had meant by the phrase “strictly construed according to its reading” included in his letter to C.H. Chase. Into this should not be read any commitment, on the part of its author, to the conclusion that the Constitution was “not a pro-slavery instrument.” Such an interpretation of the document

could only be arrived at by strictly reading its *text* without any regard for the expressly stated, pro-slavery intentions of the men who had written that text. After this prefatory explanation, Douglass devoted the remainder of the editorial – under the telling subtitle “The Constitutionality of Slavery” – to explaining why he still believed that the original intent of the Framers mattered, and mattered a great deal. Sounding like a very faithful Garrisonian, Douglass confessed that he could only bring to bear upon the subject questioning that was underpinned by the “coolness and clearness of which an unlearned fugitive slave, smarting under the wrongs inflicted by this unholy Union, is capable. We cannot talk ‘lawyer like’ about law ... nor can we, in connection with such an ugly matter-of-fact looking thing as the United States Constitution, bring ourselves to split hairs about the alleged legal rule of interpretation, which declares that an ‘act of the Legislature may be set aside when it contravenes natural justice.” This was a direct criticism of Lysander Spooner’s approach, the dissection of which Douglass subsequently devoted a considerable portion of the editorial. (Frederick Douglass, “The Constitution and Slavery (1849),” in *The Life and Writings of Frederick Douglass: Early Years, 1817-1849*, ed. Philip S. Foner [New York: International Publishers, 1950].) Two weeks later, in another *North Star* editorial, Douglass continued to toe the Garrisonian party line. The Constitution gave life to the national government, consequently it would be necessary to view that document as “impotent and useless” if it could be shown that the “government has a character independent of, and powers superior to” its creator. From the realization that the *pro-slavery* Constitution was neither “impotent” nor “useless” came the inevitable conclusion that the federal legislature, executive, and judiciary were also inescapably pro-slavery. To declare otherwise was to “wrest it from its true intent and meaning, by a class of rules unknown and unsustained by a single precedent in this country.” Douglass suggested that he was open to persuasion that such a class of rules existed, “but we have not yet seen them; and until we do, we shall continue to understand the Constitution not only in the light of its letter, but in view of its history, and the circumstances in which it was

adopted.” That suggestion was explicitly directed at Gerrit Smith, but it took another two years before Douglass’s new mentor was able to persuade him that those rules actually existed. (“Comments on Gerrit Smith’s Address [1849],” in *The Life and Writings of Frederick Douglass: Early Years, 1817-1849*, ed. Philip S. Foner [New York: International Publishers, 1950].)

[16.] Letter from Douglass to Smith, January 21, 1851, in Foner, *Selected Speeches and Writings*, 171.

[17.] Ibid.

[18.] Philip S. Foner, ed. *The Life and Writings of Frederick Douglass, Vol. 2: Pre-Civil War Decade 1850-1860* (New York: International Publishers, 1950), 152-3. He also told Stephen S. Foster and Samuel J. May (in private correspondence) in the Spring of 1851. (*Selected Speeches and Writings*, 174, n1.) For examples of subsequent speeches and writings, see Douglass, “July Fourth.”; “Republican Party.” Additionally, unconstitutionality of slavery writings, by Spooner, Goodell, William Jay, and William Birney appeared in the *Frederick Douglass Paper* (the 1851 successor to the *North Star*) throughout 1851 and 1852. John R. McKivigan, “The Frederick Douglass-Gerrit Smith Friendship and Political Abolitionism in the 1850s,” in *Frederick Douglass: New Literary and Historical Essays*, ed. Eric J. Sundquist (New York: Cambridge University Press, 1990). While in 1849 he scoffed at the notion that unconstitutionality-of-slavery arguments, such as those penned by Spooner, were constructed using fierce logic, by 1855 he was speaking glowingly of the “iron-linked logic” in Smith arguments on this subject. (Quoted in John Stauffer, *The Black Hearts of Men: Radical Abolitionists and the Transformation of Race* (Cambridge, MA: Harvard University Press, 2001), 10.)

[19.] James H. Cook, “Fighting with Breath, Not Blows: Frederick Douglass and Antislavery Violence,” in *Antislavery Violence: Sectional, Racial, and Cultural Conflict in Antebellum America*, eds. John R. McKivigan and Stanley Harrold (Knoxville: University of Tennessee Press, 1999), 68-9; Myers, *Frederick Douglass*.

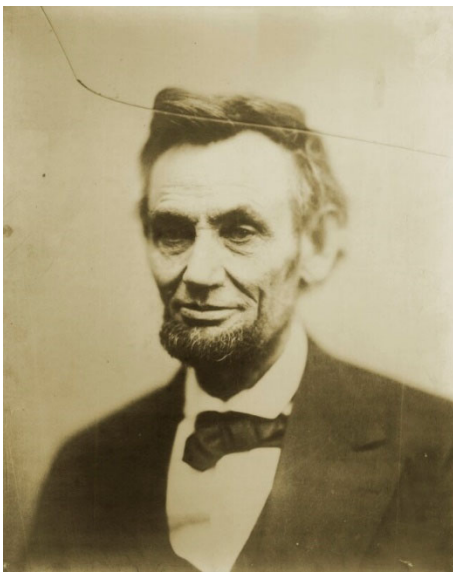
[20] Frederick Douglass, “The Fugitive Slave Law, Speech to the National Free Soil Convention at Pittsburgh, August 11, 1852,” in *Frederick Douglass: Selected Speeches and Writings (Abridged and Adapted by Yuval Taylor*, ed. Philip S. Foner (Chicago: Lawrence Hill Books, 1999), 109 (italics added).

[21] James Oakes, *The Radical and the Republican: Frederick Douglass, Abraham Lincoln, and the Triumph of Antislavery Politics* (New York: W. W. Norton, 2007), 11.

ON DOUGLASS AND RIGHTEOUS VIOLENCE

by Peter C. Myers

Frederick Douglass was, with Abraham Lincoln, one of the two greatest apostles of the natural-rights doctrine in 19th-century America and certainly the most prominent exemplar of heroic resistance to slavery. In his characteristically reasonable, well-tempered essay, Nick Buccola focuses on Douglass’s arguments on the right and duty to resist injustice. He thereby zeroes in on what to my mind are Douglass’s greatest virtue and his most significant shortcoming as a thinker and activist.



Abraham Lincoln (February 1865)

Nick finds Douglass’s resistance argument compelling in important respects and also problematic. So do I. The

more troubling of Nick’s concerns, as I see it, is that Douglass’s argument may be overbroad. If we, from our seemingly safe historical distance, applaud Douglass when he says it is right and wise to kill a kidnapper or a slaveholder, then must we endorse the right of all who are conscientiously convinced of the presence of a grievous violation of natural right to take the law into their own hands—to put a stop to the violation by any means necessary? The worrying examples Nick mentions could be easily multiplied.

The core of the issue is a tension inherent in the natural-rights doctrine. As the fundamental criterion of political legitimacy, the natural-rights doctrine at once requires and endangers the rule of law. It requires the rule of law to secure rights that are insecure in their natural condition, and it endangers the rule of law, because in subordinating the actions of lawmakers and law-enforcers to the higher law of natural justice, it licenses popular acts of resistance outside and even against the letter of the law.

At a high level of generality, the only response to this tension is to say that people must be taught and encouraged to judge well—to think soberly and carefully about what counts as a right and as a violation of right, also about the proper means for securing rights. The question for present purposes is whether Douglass by example assists in this teaching and encouragement.

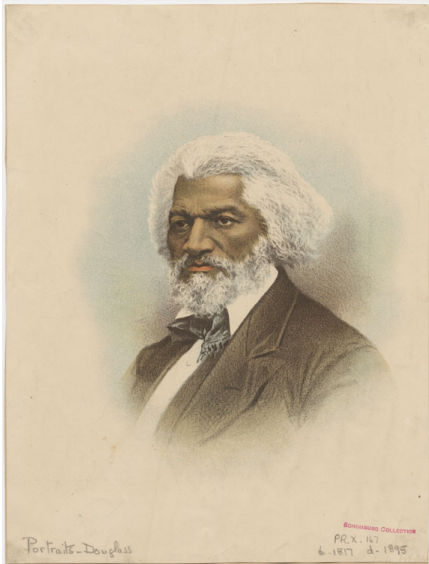
That Douglass provides a salutary example in the identifying of rights and violations of rights needs no argument. “If slavery is not wrong,” as Lincoln put it, “nothing is wrong.” [22] Slavery was a state of war, Douglass repeatedly charged in the language of John Locke, from which follows that it may be resisted by any means necessary. “In all States and Conditions,” Locke maintained, “the true remedy of Force without Authority, is to oppose Force to it.” [23]

The serious question, as Douglass properly framed it, is not whether the resistance he advocated was *right* but whether it was *wise*. The serious question, in other words, concerns Douglass’s prudence. In general terms: were the acts of resistance Douglass recommended well conceived to secure the good at which they aimed without producing any countervailing evils? More specifically:

were those acts well conceived to correct the particular rights-violations at issue without doing intolerable harm to the rule of law?

On Douglass's Prudence: Resisting the Fugitive Slave Law

An interesting question in political philosophy arises as to how Douglass's claims of natural duty can be established on the premise of self-ownership, which he took to be the basis of our claims to natural rights.^[24] That question I raise only in passing. I focus instead on two respects in which Douglass's doctrine extends the teaching of the Declaration of Independence. Douglass proclaimed a duty to aid others, as Nick stresses, and he also proclaimed a right of *non*revolutionary resistance in addition to a revolutionary right. He proclaimed, in other words, a right to correct rights-violations in individual cases and also to alter society in ways that fell short of fully abolishing and replacing the existing constitutional order.



Frederick Douglass

In both these respects, opening a broad field of nonrevolutionary resistance and exhorting the zealous to raise arms to succor the oppressed, Douglass significantly heightened the tension between natural rights and the rule of law. Was he wise or prudent in doing so? It seems to me the evidence supports a mixed conclusion.

Was Douglass prudent in advocating violent resistance to enforcement of the Fugitive Slave Act? Several considerations make a solid case for the affirmative. First is the particularity of the primary objective: in cases such as that involving Anthony Burns, an individual man's liberty, indeed his very life, was at stake. Second, there was good reason to conclude that legal recourse was unavailing. The Fugitive Slave Law of 1850 made a mockery of due process, and in adjudicating it the record of state courts was uneven and the U.S. Supreme Court altogether untrustworthy. Third, abolitionists' resistance to fugitive-slave renditions had proved successful with sufficient frequency at least to warrant confidence in the attempt.^[25]

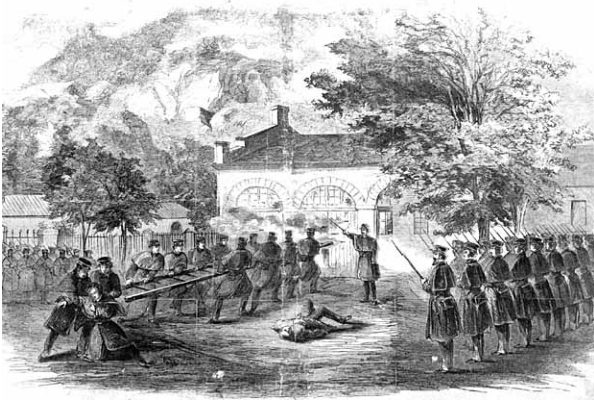
Moreover, taking a larger view (and echoing, as Nick notes, the lesson Douglass drew from his Covey battle), Douglass contended plausibly that forceful resistance made "an argument in favor of the manhood of our race," serving the antislavery cause by discrediting a principal prejudice supportive of slavery—to say nothing of deterring would-be slave catchers from seeking their livelihood in that sordid occupation. Although the frequency of such resistance certainly heightened sectional tensions, Lincoln, without approving resistance to the Fugitive Slave Law, observed as the war approached that such resistance presented no serious danger to the rule of law or the stability of constitutional government.^[26]

Douglass's Imprudence: The Case of John Brown

Beyond individual cases, Douglass's advocacy of violence as a means of furthering the general objective of abolition seems to me more problematic. This is especially evident in his fulsome praise for the character and actions of John Brown.

Granted, Douglass declined to participate in Brown's Harpers Ferry plot because at the time he thought it imprudent. He sensibly regarded it as a suicide mission, and perhaps independent of that, he thought it unwise to assault a federal arsenal, the effect of which would be to place the antislavery cause in opposition not only to the slave power but to the U.S. government itself. In this

respect his objection to Brown's plan is linked with his objection to William Lloyd Garrison's disunion position.



Raid on Harpers Ferry

Nonetheless, Douglass glorified Brown's actions and character in terms that surpassed his praise for any other, including Lincoln. He not only called Brown "our noblest American hero," he compared Brown to Moses, Socrates, and Jesus.^[27] Even on the question of Brown's prudence or imprudence, Douglass qualified and perhaps reversed his initial criticism: "If John Brown did not end the war that ended slavery, he did at least begin the war the ended slavery."^[28] The suggestion is that Brown, as things turned out, did not align the abolition cause against the United States. To the contrary, his mini-invasion of the South shocked Northerners' theretofore-sleeping antislavery conscience into wakefulness, and he and his band of raiders functioned as a vanguard force of the Union army.

Thus understood, Douglass's praise for Brown is of a piece with his insistence, issuing in some extremely harsh criticisms of Lincoln, on the imperative of prosecuting the Civil War from the outset as an abolition war. Admirers such as Philip Foner have praised Douglass for prescience, considering that the war did become an abolition war. The question, however, is one of timing. As Lincoln insisted and as Douglass himself seems to have later conceded, to make actual war against slavery from the outset, as Brown attempted and Douglass urged, would most likely have resulted in disaster for the antislavery cause. It would have unified the slaveholding states against the Union and made the war impossible to win.

Douglass praised Brown to the heavens for martyring himself in the service of justice for his society's most abused, downtrodden members, a class to which he himself did not belong. Yet in his empathy for those enslaved, Brown seems to have been heedless of the danger his actions posed to the preservation of the Union—which means, heedless of the rights of *all* others, the free as well as the enslaved, whose security depended on the maintenance of the rule of law in America's constitutional, republican union. Douglass's overestimation of Brown's virtue and, correspondingly, his somewhat ambivalent appreciation of Lincoln's virtue constitutes, I believe, a significant failure of prudence on Douglass's part.

In an 1846 letter^[29] Douglass acknowledged a certain bloodyminded enthusiasm for righteous violence as a regrettable element of his character. It is an element of his character, I believe, that continued at times to mar his judgment even in his maturity.

Endnotes

^[22.] Abraham Lincoln to Albert Hodges, April 4, 1864, in *Collected Works of Abraham Lincoln*, edited by Roy P. Basler (New Brunswick, NJ: Rutgers University Press), vol. 7, 282.

^[23.] John Locke, *Second Treatise of Government*, section 155, in *Two Treatises of Government*, edited by Peter Laslett (Cambridge: Cambridge University Press, 1988), 370-71 (emphasis original). Online version: John Locke, *Two Treatises of Government*, ed. Thomas Hollis (London: A. Millar et al., 1764). </titles/222>.

^[24.] Frederick Douglass, "A Friendly Word to Maryland," November 17, 1864, in *The Frederick Douglass Papers*, Series One, edited by John W. Blassingame and John R. McKivigan (New Haven: Yale University Press, 1979-1992), vol. 4, 42.

^[25.] On these last two points, see H. Robert Baker, "The Fugitive Slave Clause and the Antebellum Constitution," *Law and History Review* 30 (2012), 1133-74.

^[26.] Thus Lincoln, "First Inaugural Address," March 4, 1861, in *Collected Works*, vol. 4, p. 269: "The fugitive slave

clause ... [is] as well enforced, perhaps, as any law can ever be in a community where the moral sense of the people imperfectly supports the law itself.”

[27.] See Douglass, “John Brown,” May 30, 1881, in *The Essential Douglass: Selected Writings and Speeches*, edited by Nicholas Buccola (Indianapolis, IN: Hackett Publishing Company, 2016), 262-63, 270, 273.

[28.] *Ibid.*, 275.

[29.] Douglass to Francis Jackson, January 29, 1846, in *Life and Writings of Frederick Douglass*, ed. Philip S. Foner (New York: International Publishers), vol. 1, 135-36.

ON DUTY PERFECT AND IMPERFECT

by George H. Smith

According to Nicholas Buccola, Frederick Douglass believed that “individuals have the right and the imperfect duty to use force in the defense of the natural rights of others.” Quoting from the *Blackwell Dictionary of Western Philosophy*, Buccola explains that a “perfect duty” is one that “must be fulfilled under any circumstances,” whereas an imperfect duty “may be overridden” in particular circumstances and “allows a significant degree of freedom” in how we discharge the duty.

I find this explanation a bit confusing. At the very least it deviates from the traditional meanings of “perfect” and “imperfect,” as these adjectives were applied to “rights” and “duties” for several centuries by political philosophers.

As commonly viewed today, rights are enforceable moral claims. Historically, these were often called “perfect rights,” in contrast to the “imperfect rights” that create moral obligations that presuppose voluntary compliance. For example, when 17th- and 18th-century philosophers spoke of the “right to charity” and the corresponding obligation to be charitable, they usually (though not always) meant to signify “imperfect” rights and duties, i.e., something we *ought* to do, as a matter of conscience,

but *not* something that we may legitimately be *compelled* to do. The so-called imperfect right of a poor person to charity meant that others have a moral obligation to assist those in need, but this claim cannot properly be enforced by coercive means; it depends instead on the voluntary choices and actions of moral agents. By the early 19th century, this dual usage of perfect and imperfect rights had pretty much died out, and the term “a right” was generally used thereafter to designate a moral duty that can be enforced, either through coercive laws or through violent self-defense by individuals.

Similarly, a “perfect duty” was conceived as an enforceable moral obligation, whereas an “imperfect duty” was seen as a moral obligation that requires voluntary compliance. Duties and rights, in this scheme, are simply reverse sides of the same coin. If I have a perfect right to my freedom, then others have a perfect duty to respect my freedom. That is to say, if others attempt to violate my freedom, then I have a right (though not an obligation) to resist them by force. If, in contrast, I have an imperfect right to be treated fairly by my friends, then they have an imperfect duty to treat me fairly. If my friends treat me unfairly, then I may attempt to *persuade* them to change their behavior, but I may not use force or the threat of force in the attempt.



Hugo Grotius

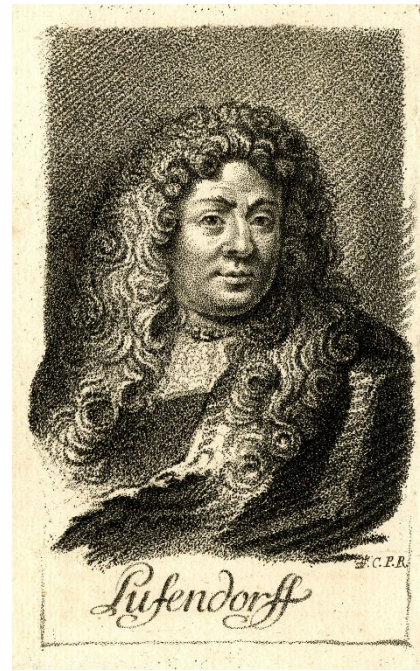
Although Hugo Grotius outlined the basic distinction between perfect and imperfect rights and duties in his highly influential book, *The Rights of War and Peace* (1625),

it was left to Samuel Pufendorf to explain the distinction more fully and to coin the labels “perfect” and “imperfect.” As Pufendorf wrote in *On the Law of Nature and Nations* (1688):

[S]ome things are due to us by a perfect, others by an imperfect right. When what is due us on the former score is not voluntarily given, it is the right of those in enjoyment of natural liberty to resort to violence and war in forcing another to furnish it, or, if we live within the same state, an action against him in law is allowed; but what is due on the latter score cannot be claimed by war or extorted by a threat of the law. Writers frequently designate a perfect right by the additional words, “his own,” as they say, for example, a man demands this by *his own right*. But the reason why some things are due us perfectly and others imperfectly, is because among those who live in a state of mutual natural law there is a diversity in the rules of this law, some of which conduce to the merely existence of society, others to an improved existence. And since it is less necessary that the latter be observed towards another than the former, it is, therefore, reasonable that the former can be extracted more rigorously than that latter, for it is foolish to prescribe a medicine far more troublesome and dangerous than the disease.[\[30\]](#)

Stephen Buckle explains the historical importance of Pufendorf’s discussion as follows:

Pufendorf’s way of drawing this distinction [between perfect and imperfect rights and obligations] is a hint in the direction of modern distinctions between law and morals: between what we can be compelled to do by others, on the one hand, and, on the other, what our own humanity should compel us to do, without external enforcement.... Imperfect obligation arises only *within* the agent, unaccompanied by an external power to compel action.... Imperfect obligation is centrally a matter of the conscience.[\[31\]](#)



Samuel von Pufendorf

Frederick Douglass, according to Buccola, believed that we have an “imperfect duty” to defend the rights of others. Given the concept of “imperfect” used by Buccola, this means that this duty may be “overridden” in some cases and that it allows considerable discretion in how it is exercised. Now, I have read a fair amount by Douglass over the years, and I don’t recall encountering this theory in his writings. For one thing, with the exception of Lysander Spooner, Wendell Phillips, and perhaps a few other abolitionists, I don’t think the abolitionists were especially interested in developing the fine points of political theory. But Buccola is far better versed in the ideas of Douglass than I am, so I will accept his interpretation for the sake of this discussion.

I don’t wish to overstress how my notion of perfect and imperfect duties differs from that proposed by Buccola. This may be nothing more than a terminological disagreement that doesn’t amount to much in the final analysis. But I do have a problem with the argument that we have even an “imperfect duty” (as Buccola uses the phrase) to defend the rights of other people. That we have a *perfect right* to defend not only our own rights but the rights of others as well I do not contest. But this right does not entail a duty, whether imperfect or perfect, to defend the rights of others. True, all rights carry

corresponding duties, but the correlative duty of the right to defend others is simply the duty (moral obligation) of third parties not to interfere, by force, with our defense, provided our defense is just. If a third party forcibly interferes with my effort to assist an innocent victim of invasive violence, then both I and the victim may use violence to resist the third party.

My point runs parallel to the individual right of self-defense. Although I have a perfect (enforceable) right to defend myself against an aggressor, I do not have a duty to do so. This is a matter of personal choice and will depend on my values. However much we may disagree with the pacifist who prefers to die rather than fight back against an aggressor, we should not fault the pacifist for violating a nonexistent duty to repel violence with violence. Similarly, however much we may admire a crusader who comes to the aid of innocent victims, we should not commend him for fulfilling some kind of vague duty to humankind.

Nicholas Buccola expresses two reservations about our supposed imperfect duty to defend the rights of other people.

First, I worry that the duty's imperfection may hollow it out of much meaning. In other words, the duty is so broad – its universal nature imposes on us a sense of responsibility for all human beings – and the ways of fulfilling the duty are so varied that it seems difficult to imagine how it might be realized in the world.

I agree wholeheartedly with Buccola's point here. In fact I would go further and maintain that the problem raised by Buccola renders virtually incoherent the entire notion of a duty (whether perfect or imperfect) to defend the rights of others. The principle cannot be universalized or consistently applied. (This obviously requires more explanation, but that must await a future comment.) Buccola continues:

Second, I worry that the idea may invite a justification for extralegal violence that is far too broad.... Suppose, for example, that Joe believes fetuses have natural rights and, therefore,

abortion is murder. Is Joe justified in bombing an abortion clinic? Suppose Jane believes in a natural right of migration. Would she be justified in taking up arms against agents from Immigration and Customs Enforcement when they arrive to deport her neighbor? I suspect that even the most confident natural-rights thinker could be made uncomfortable if she imagined what might happen if Douglass's conception of duty was widely accepted and acted upon.

These two hypotheticals are quite different. If the abortion debate seems intractable, this is largely because of disagreements over what it means to be a *person*. This is largely, though not entirely, a factual disagreement, not a moral one. In contrast, whether or not we have a right forcibly to come to the aid of an illegal immigrant is clearly a problem that must be resolved by moral and political philosophy, especially in regard to our options when confronted with unjust laws. I don't think what any person subjectively believes is especially relevant to this issue. What matters is whether one's beliefs can be rationally justified.

I wish to thank Nicholas Buccola for his informative, well-written, and provocative essay. It was a pleasure to read.

Endnotes

[30.] Samuel Pufendorf, *On the Law of Nature and Nations*, trans. C. H. and W.A. Oldfather (Oxford: Clarendon Press, 1934), 118.

[31.] Stephen Buckle, *Natural Law and the Theory of Property: Grotius to Hume* (New York: Oxford University Press, 1991), 86.

FREDERICK DOUGLASS ON THE RIGHT AND DUTY TO RESIST

by Nicholas Buccola

I am grateful to Helen Knowles, Peter Myers, and George Smith for their thoughtful commentaries. Their thoughts have inspired me to use this rejoinder to offer some reflections on how Douglass might help us make sense of prudence, which Aquinas defined as “right reason with respect to action” and contemporary political theorist Ethan Fishman identified as a virtue with a unique value for politics because of “its ability to explain how to realize abstract ends through concrete means available to human beings so that we may do the right thing to the right person at the right time for the right motive and in the right way.”^[39]



Frederick Douglass

Before we get to the matter of what it is prudent to do in order vindicate natural rights, let us consider whether or not there is any duty to do so in the first place.^[40] There is a definite difference between Smith’s view – that there is no “duty, whether imperfect or perfect, to defend the rights of other people” – and Douglass’s view, which holds that our understanding of justice would be incomplete if it did not entail some consideration of what

duties we have to others *beyond* the duty to respect their natural rights. The question that Douglass might ask Smith is this: have I fulfilled the duties entailed in natural rights if I refrain from violating the natural rights of others? Do I have an obligation to do anything (or refrain from doing particular things) in order to vindicate the natural rights of others (e.g., vote in particular ways, not vote in particular ways, not vote at all, obey particular laws, not obey certain laws, persuade people in particular ways, etc.)? It seems to me that Douglass’s general answer to that question was an emphatic yes. We do have a general duty to act in ways that, in our best judgment, will move us closer to realizing justice. ^[41] As we try to figure out precisely what acting on this duty looks like in the real world, prudence is the virtue that ought to guide us.

The Myers and Knowles essays invite us to bring these abstract questions of moral philosophy down to the ground of real politics. First, let us consider the relationship between prudence and the rule of law. As Myers points out, “The natural-rights doctrine at once requires and endangers the rule of law,” an institution that is supposed to secure our rights, but the natural-rights idea provides us with a “higher law” lens through which to challenge its very legitimacy. This is a tension, Knowles shows, that occupied Douglass’s mind for many years. Knowles describes Douglass’s move from a “Garrisonian” reading of the Constitution to a “Spoonerian” reading of the Constitution as one that captures his “principled pragmatism” (a.k.a. prudence). I think Knowles is right about this. Douglass thought long and hard about embracing this reading, and there are good reasons to believe that his change of mind had its roots in *both* pragmatism and principle. Pragmatically, Douglass was looking for additional tools beyond Garrison-style moral suasion to combat “the slave power.” Acceptance of the Constitution’s legitimacy would make available political tools that the Garrisonians refused to use. As a matter of principle, Douglass’s primary concern was with natural rights, and so long as he did not violate “good morality” in adopting antislavery constitutionalism, he thought it was prudent to do so.^[42]

But Douglass's ideas on the Fugitive Slave Act and John Brown reveal that his understanding of "good morality" permitted not only disobedience to unjust laws, but active resistance to them. This raises another crucial question: when is it prudent to use violence to vindicate natural rights? Myers's framing of this question fits well with Knowles's emphasis on the status of law in Douglass's prudence: "were [the acts of resistance Douglass recommended]," Myers asks, "well conceived to correct the particular rights-violations at issue without doing intolerable harm to the rule of law?" In Myers's estimation, Douglass got it right in the Burns case and wrong in the Brown case.

"BUT DOUGLASS'S IDEAS ON THE
FUGITIVE SLAVE ACT AND JOHN
BROWN REVEAL THAT HIS
UNDERSTANDING OF "GOOD
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ACTIVE RESISTANCE TO THEM."

I am inclined to agree that Douglass got it right in the Burns case. As Myers indicates, the cause of liberating Burns was clearly just from a natural-rights perspective. What I find interesting, though, is the daylight between Myers's justification and Douglass's. For Myers, the prudence of the act of resistance in the Burns case turns on whether or not such acts pose a "serious danger to the rule of law or the stability of constitutional government." While I do not think such concerns were irrelevant for Douglass, it is fair to say that before the Civil War, they were not as important to him as they are for Myers (or were for Lincoln.) Suppose resistance to the Fugitive Slave Act was widespread enough that it *did* pose a serious danger to the rule of law. I am not sure that would have led Douglass to change his view. For Douglass, the prudence of killing kidnappers did not turn on the danger such activity posed to the rule of law; it turned on the question of whether or not the activity would have the direct effect of vindicating the natural rights of fugitives

and the indirect effect of deterring would-be kidnappers in the future. In sum, I think Myers is right to say that Douglass's judgment in the Burns case is consistent with a defensible understanding of prudence, but I do not think the reasons Myers offers for this judgment are identical to Douglass's reasons, and there may be something worth discussing in that difference.

Finally, there is the thorny case of John Brown. In their essays, both Knowles and Myers draw our attention to the issue of time. As time passed, Knowles reminds us, Douglass's judgment of how best to realize his principles in the world changed. As he described so beautifully and hauntingly in the "Prospect in the Future" piece I cited in my lead essay, repeated appeals to the hearts, minds, and souls of the American people had failed to move them from "the downy seat of inaction." What had long seemed to Douglass to be an imprudent course – an uprising of the slaves against their masters – now seemed, in his judgment, to be a course worth endorsing. Douglass viewed Brown as a kind of moral prophet because he realized – far sooner than most other abolitionists (including Douglass himself) – that reason, morality, art, and religion would not – indeed could not – bring about an end to slavery *because* it was a system of lawless violence that could only be "met with its own weapons."[\[43\]](#)

As Knowles points out, it makes sense that the passing of time without abolitionist progress made Douglass more "militant," but this does not necessarily undermine one crucial aspect of Myers's critique: "the question ... of *timing*." Had Brown succeeded in his goal of starting an "abolition war" in 1859, Myers argues, the result likely would have been a "disaster for the antislavery cause." As a historical matter, it seems likely that Myers is right about this. As a matter of principle, though, I am not ready to follow Myers in concluding that Douglass's "overestimation of Brown's virtue" constitutes a "significant failure of prudence." My reluctance has to do with yet another way to think about the relevance of time to our judgment of this matter. Knowing what we know now, it seems easy to question the wisdom of Brown's radical resistance, but I think Douglass was right to be

reticent to pass such judgment on Brown. When he reflected on Brown’s activity, he was always careful to do so from the standpoint of the 1850s, not the 1860s, 1870s, or later. From the perspective of 1859 – when Brown had good reason to feel a sense of “weary hopelessness” about the prospects for abolition – was it really imprudent to take radical action? As a tactical matter, the answer is clearly yes (and Douglass thought so at the time.) But as a matter of natural-rights morality *in that moment in time*, I am not so sure we can conclude that Brown’s actions – or Douglass’s defense of them – were imprudent. Prudence is the virtue that helps us figure out what means we ought to use in order to realize our principles in the world. We ought to judge the prudence of others based on the range of options available to them at the time of decision, not from a God-like position from which we have a universe of options available to us. In 1859, what means seemed viable to radical abolitionists like Douglass and Brown? After the many setbacks of the 1850s, was it prudent any longer to rely solely on appeals to “the higher and better elements of human nature?”^[44] These are tough questions, and I am therefore less than convinced that Douglass’s judgment of Brown’s character constitutes a failure of his prudence.

I am so grateful to these distinguished scholars for pushing me to think more deeply about these matters, and I look forward to our conversation.

Endnotes

^[39.] Thomas Aquinas, *Summa Theologica*, (IIaIIae, 47.2) and (IIaIIae47.4). Ethan Fishman, “Introduction,” *Tempered Strength: Studies in the Nature and Scope of Prudential Leadership* (Lanham, MD: Lexington Books, 2002), 5.

^[40.] I accept Smith’s criticisms of my use of the term “imperfect duty.” I knew I was stepping onto treacherous terrain when I attempted to apply a formal philosophical concept to Douglass, who Smith is right to say was not driven primarily by a desire to articulate “fine points of political theory.” In conceding this point, I do not mean to – nor do I think Smith means to – slight Douglass. As I’ve argued elsewhere, Douglass’s primary concern was with political action that would bring us closer to justice.

He pursued such action in a thoughtful and reflective way and took ideas very seriously. He was not, though, a philosopher and I think he is better understood as a philosophical reformer-statesman.

^[41.] I am not sure about exactly what philosophical terminology to use to describe Douglass’s position, but I am inclined to think he is right. Indeed, I have struggled to find a good name for this idea for well over a decade of work on Douglass. If you have any ideas, please do let me know.

^[42.] Letter from Douglass to Gerrit Smith, January 21, 1851, in Philip Foner, ed. *Selected Speeches and Writings*, 171.

^[43.] Frederick Douglass, “Captain John Brown Not Insane,” in Philip Foner, ed. *Selected Speeches and Writings*, 375.

^[44.] Frederick Douglass, “The Prospect in the Future,” in *The Essential Douglass*, 137.

TIMING IS EVERYTHING

by Helen J. Knowles

Dr. Buccola’s thoughtful response regarding “Frederick Douglass and the Right and Duty to Resist” asks us to consider a number of very important questions that Douglass’s words and actions generate. In this, the first of my series of brief commentaries on Buccola’s response, I am inclined to agree with his conclusion that it benefits us little to evaluate the “prudence” of those words and actions by ripping them from their temporal context and judging them from a 21st-century perspective.



Slavery “provides” (to us today) and “provide[d] [at the time] a means to construct a sense of unity among men

and women whose experience has become [or was] increasingly diverse and who, with the emergence of new minorities in the United States, are [or were] threatened with political marginalization."^[45] However, beyond that "sense of unity" – the sense of belonging to the antislavery community as that community is broadly understood – abolitionists lived many different lives and brought to that community myriad life experiences. And what those men and women experienced played an immense role in shaping the contributions that they made to the antislavery community. Every day residents of the border states were exposed to slavery-related pressures unique to that region;^[46] life in urban areas, such as Boston and New York, was fundamentally different from life on the rural, western frontier; men and women lived very different lives and were expected (in terms of both social norms and legal dictates) to fulfill very different roles;^[47] and, perhaps most profoundly, there was no way to compare the life experiences of blacks and whites in 19th-century America. Just as there is no way to compare the life experiences of Americans in the 1850s to our life experiences in 2017.

Historians must view the words and actions of *every* abolitionist through the lens of "experience."^[48] And sometimes those views leave us with more questions than answers. That, I believe, is a good thing, because it frequently pushes us to go beyond our comfort zones and to venture into territory that, with the passing of time, mercifully, we will never have to experience first hand.

Postscript: this, and my other contributions to this follow-up discussion, are dedicated to the memory of Professor Michael Morrison (1948-2017), a great teacher, mentor, and scholar, from whom I am blessed to have learned so much about the forces of antislavery and abolitionism during the period of the Early American Republic. RIP, Mike.

Endnotes

^[45.] Ira Berlin, "American Slavery in History and Memory and the Search for Social Justice," *Journal of American History* (2004), 1259.

^[46.] Generally see Stanley Harrold, *Border War: Fighting over Slavery before the Civil War* (Chapel Hill, NC: University of North Carolina Press, 2013).

^[47.] Generally see Julie Roy Jeffrey, *The Great Silent Army of Abolitionism: Ordinary Women in the Antislavery Movement* (Chapel Hill, NC: University of North Carolina Press, 1998). This book also emphasizes the general importance of looking at abolitionism as a very diverse movement; as Professor Jeffrey notes, some women were radical feminist abolitionists, but the vast majority of them were not.

^[48.] Berlin, "American Slavery in History and Memory."

SELF-OWNERSHIP, DUTY, AND PRUDENCE

by Peter C. Myers

Before I get back to the business of ganging up on our mutual friend Nick Buccola, I want to commend him again for his original essay and for his no-less-able and thought-provoking rejoinder to the first round of comments.

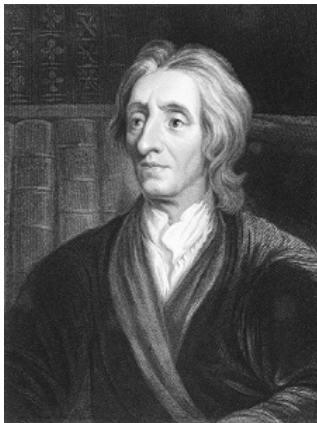
George Smith asked him to expand on the philosophic question of a moral duty to defend others' rights in Douglass, and Professor Knowles and I asked for his further reflections on the more political matter of Douglass's prudence. I trust I commit no trespass on another's territory if I begin by pressing a bit further the question of moral duty, which I raised in passing in my first set of comments.

To my mind, it is beyond doubt that Buccola interprets Douglass correctly in the matter of a duty to defend others' natural rights. Douglass almost certainly exaggerated, but he was attesting to no mere personal distinction when he told an 1891 interviewer, "Duty has been the moving power that influenced all my actions during all the years of my life."^[49] He certainly believed that rights-bearing persons have a moral duty, where prudence allows, to defend not only their own, but other persons', rights.

The difficult question, however, concerns not the *fact* that Douglass held this view, but rather the *grounds* for it. This was the question I lightly raised in the first round, and I take this to be the basic question that Smith is raising also. What is interesting here is that Smith's objection to Douglass's view, along with my own question, rests on a premise that Douglass himself emphatically affirmed as the basis for natural rights. This is the premise, Douglass says, that "entirely took possession of me, even in childhood": "Every man is the *original, natural, rightful,* and *absolute* owner of his own body."^[50]

So the question is: if self-ownership is the basis of natural rights, how can we derive a principle of positive natural duty from that basis? It is easy to see, as Smith notes, how that premise generates a negative duty to forbear infringing the rights of other persons. But how can there be a positive duty to assist or defend others? Would not such a duty amount to a natural claim upon the labor or actions of others—to a degree, a natural ownership of the labor of others—and if so, how could that square with Douglass's idea of the foundation of natural rights?

I might add this: to press a question of this depth and difficulty in the present forum is in some sense unfair, given that it would require a lengthy volume to answer it fully. I press it here, however, because although I took a crack at answering it in my own book on Douglass (*Frederick Douglass: Race and the Rebirth of American Liberalism*), it's a question that continues to give me difficulty, and I'd be interested in Buccola's thoughts on it.



John Locke

(I add parenthetically, in response to a private suggestion put forward by David Hart, that here is one source in the formation of Douglass's thinking about natural rights. His language of self-ownership, along with his descriptions of slavery, is unmistakably the language of John Locke. Whether Douglass read Locke directly I have never been able to ascertain, but if not, he must have picked up Lockean ideas from his abolitionist colleagues. There are certainly other important sources of his thinking, but Locke is a foundational one.)

Now as to the matter of prudence: responding to my concern about the rule of law, Buccola observes that my criterion of prudence differs from Douglass's criterion. I think he's right about that, but I take that fact to be indicative of the defect in Douglass's prudence that I was charging in round one.

Let's start from the premise that seems to be Douglass's premise: that prudence dictates the course of action best calculated to secure the natural rights of individual fugitives and in the process to deter would-be kidnappers in the future. So far so good. But how much success could Douglass expect to have in this enterprise, relying on the efforts of the relatively small minority of abolitionists willing to assist fugitives in their liberation—a task scarcely less dangerous for them than the recapture of fugitives was for the slave hunters? How far would the successes he and his collaborators were able to achieve in this business contribute to the larger objective of abolishing slavery itself?

In raising such questions, I don't mean that Douglass should have refrained from his efforts to assist fugitives. I only mean that when he considered the prudence of doing so, his own ultimate objective should have moved him to consider that abolition could not be accomplished by abolitionists alone; they needed the assistance of law, backed by federal power, to accomplish it, and they therefore needed to expand the class of public officials (hence also of voters) allied with them, which they could only do by cultivating a reputation of general respect for the law.

As Douglass would have learned from Locke as well as other sources, the state of nature among human beings

contains a whole universe of potential kidnappers and other sorts of rights violators, and the only sure means of deterring or obstructing them is constitutional government. Without that, there is only the question of who has the superior power. In considering his acts of resistance, prudence required of Douglass to think of the conditions of his ultimate or longer-term objectives as well as his nearer-term ones.

For the present, I will let that stand as my response also to the rejoinder concerning John Brown. I have more to say on that subject, but I will leave that for the next posting.

Endnotes

[49.] Douglass, "Duty Has Been the Moving Power in My Life," July 12, 1891, *Douglass Papers*, Series One, vol. 5, 458.

[50.] *Douglass Papers*, vol. 4, 42 (emphasis original).

WITH A LITTLE HELP FROM HIS FRIENDS

by Helen J. Knowles

A second question generated by Dr. Buccola's "Frederick Douglass and the Right and Duty to Resist" is a question of causation and correlation. If we accept that circumstances played an important role in shaping Douglass's views about natural rights, it is logical to want to dig deeper and find out if we can more precisely determine what caused him to hold these views and what the correlation is between these views and certain events.

Such inquiries arguably become more pressing when we turn our attention to the 1850s change of heart that Douglass had about the relationship between slavery and the Constitution. After all, "[s]lavery was the original sin in the New World garden, and the Constitution did more to feed the serpent than to crush it." [51] Or, put another way, "slavery somehow was there at the constitutional beginning, like an unbidden, malevolent spirit at a festive celebration: the fairy-tale witch who was not invited to

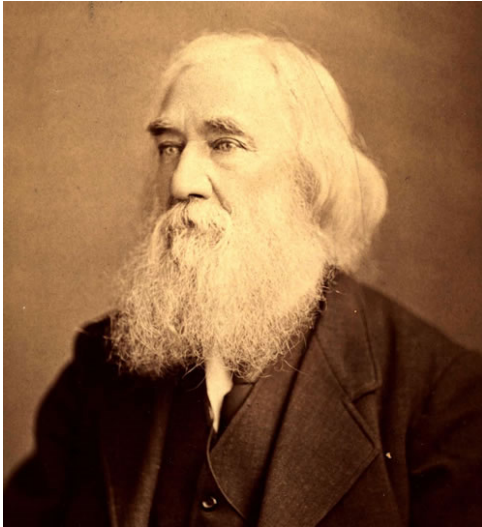
the christening but who came anyway and in an act of spite left a curse on the child." [52] That the Framers did a deal with the slavery Devil in Philadelphia is not something of which only relatively recent generations of Americans have become aware. It is not a fact upon which an historian stumbled one day when rifling through some obscure manuscripts in an obscure archive. All of the unconstitutionality-of-slavery treatises were written after the publication of damning evidence of the Framers' compromising actions that permitted the snake of slavery to sit comfortably coiled at the feet of their desks. This evidence emerged – laid out in black and white for all to see – when James Madison's notes from the constitutional convention were posthumously published in 1840. Given the existence of those notes, it is difficult to understand how, especially after the passage of the Fugitive Slave Act, any individual could make a serious and intellectually authentic argument that slavery was unconstitutional.

“SUCH INQUIRIES ARGUABLY BECOME MORE PRESSING WHEN WE TURN OUR ATTENTION TO THE 1850S CHANGE OF HEART THAT DOUGLASS HAD ABOUT THE RELATIONSHIP BETWEEN SLAVERY AND THE CONSTITUTION.”

I am inclined to believe that we are never going to find the smoking gun that leads us, once and for all, to understand what caused Douglass to change his opinion about the Constitution because I do not believe that such a smoking gun exists. I agree with Dr. Buccola that Douglass "thought long and hard about embracing this reading." His writings suggest as much – they suggest that this was not an easy decision. What intrigues me is why he came to this reading so late (relatively speaking).

As early as the 1830s, abolitionists who disagreed with the Garrisonian condemnation of the Constitution offered modest and cautious arguments that the document permitted but did not actually sanction slavery. [53] More radical theories of constitutional interpretation took hold

during the 1840s, but only Lysander Spooner's could claim a methodologically rigorous, absolutist commitment to the position that slavery was unconstitutional.



Lysander Spooner

Spooner published his *The Unconstitutionality of Slavery* in two parts, as contributions to a debate that he felt it was necessary to have with Wendell Phillips, one of Garrison's most prominent lieutenants. In 1844 Phillips published *The Constitution: A Pro-Slavery Compact*, which he used to shore up the Garrisonian constitutional interpretive position.^[54] The following year, Spooner responded with what became "Part First" of *The Unconstitutionality of Slavery*.^[55] In 1847, Phillips fired back with his *Review of Lysander Spooner's Essay on the Unconstitutionality of Slavery*.^[56] The final word in this debate came from Spooner's pen, just a few months later, when he wrote *The Unconstitutionality of Slavery: Part Second*, in which he provided additional evidence for the argument made in Part First.^[57]

These publications received extensive coverage in the abolitionist press, and Spooner – who was his own best and worst publicist – ensured that his writings were widely disseminated. However, as the 1840s came to a close, not only had Spooner moved on to other interests, but also the coverage of his treatise had dissipated. This reduction in enthusiasm for his theory was only accelerated by the passage of the Fugitive Slave Act. Except for Frederick Douglass, who in 1851 embraced

an interpretive theory that had already seemingly run its course of interest. Why did this happen? That is a question I will briefly try to address next time.

Endnotes

[51.] Akhil Reed Amar, *America's Constitution: A Biography* (New York: Random House, 2005), 20.

[52.] William M. Wiecek, "The Witch at the Christening: Slavery and the Constitution's Origins," in *The Framing and Ratification of the Constitution*, eds. Leonard W. Levy and Dennis J. Mahoney (New York: Macmillan, 1987), 167.

[53.] Helen J. Knowles, "The Constitution and Slavery: A Special Relationship," *Slavery and Abolition* 28, no. 3 (2007): 309-28.

[54.] Wendell Phillips, *The Constitution: A Pro-Slavery Compact -- Selections from the Madison Papers, &C.* (New York: American Anti-Slavery Society, 1844; repr. New York: Negro Universities Press, 1969).

[55.] Lysander Spooner, *The Unconstitutionality of Slavery* (Boston: Bela Marsh, 1845). Online version: Lysander Spooner, *The Unconstitutionality of Slavery* (Boston: Bela Marsh, 1860). <[/titles/2206](#)>.

[56.] *Review of Lysander Spooner's Essay on the Unconstitutionality of Slavery: Reprinted from the "Anti-Slavery Standard," with Additions* (Boston: Andrews & Prentiss, 1847; repr. New York: Arno Press & New York Times, 1969).

[57.] Lysander Spooner, *The Unconstitutionality of Slavery: Part Second* (Boston, MA: Bela Marsh, 1847). Online version: Lysander Spooner, *The Unconstitutionality of Slavery: Part Second* (Boston: Bela Marsh, 1860). <[/titles/2207](#)>.

DO WE HAVE A MORAL OBLIGATION TO HELP OTHER PEOPLE?

by George H. Smith

In "Frederick Douglass on the Right and Duty to Resist," Nicholas Buccola takes issue with my rejection of the notion that we have even an imperfect (i.e., unenforceable) duty to defend the rights of other people. Or, at least, Buccola contrasts my position with that of Frederick Douglass, which he seems to regard as better: "We do have a general duty to act in ways that, in our best judgment, will move us closer to realizing justice."

I maintain, in contrast, that the only natural duty we have to others is the "negative" duty (or moral obligation) to abstain from violating their rights. So-called "positive" duties, such as the obligation to help those in need or the obligation to protect others from harm, are purely a matter of individual choice. There is no "duty" attached to these and similar actions.

It should be understood that there are many good and even virtuous actions that are not moral obligations. It is a mistake to classify all good actions as falling into the category of obligatory actions. We incur positive obligations only insofar as we enter into voluntary agreements with other people. These obligations may be "perfect," as when we sign a formal contract; or they may be "imperfect," as when we promise a friend that we will help her move. If I promise a friend that I will help her move, this is a benevolent gesture on my part, but it is not morally obligatory. If I do not make this promise, I could not reasonably be accused of defaulting on a moral obligation. If I make the promise this would be because I value her friendship and want to help her out. There need be no sense of obligation motivating my promise—unless, perhaps, the person had previously helped me move, and I feel obligated to reciprocate.

A person for whom individual freedom is a fundamental value will naturally take an interest in the principles of justice. Slavery will be abhorrent to him or her, since it flatly contradicts the fundamental value of freedom. It is

therefore understandable why this person might join the antislavery cause without regarding his or her participation as a duty.



Of course, most abolitionists did consider their crusade against slavery to be a moral duty. But I suggest that this conviction flowed more from their religious beliefs than from a purely secular theory of rights. Many of the abolitionists embraced some version of evangelical Christianity and shared its fervor for moral reformation typical of that movement in antebellum America. Although slavery was understood to be a violation of rights (especially the right of self-ownership), these evangelical Christians viewed slavery first and foremost as a major *sin* that should be eradicated, along with other sins. This viewpoint helps to explain why most major abolitionists—with rare exceptions, such as Lysander Spooner (who was a deist)—also campaigned for the compulsory prohibition of alcohol. This position makes little sense if viewed purely from the perspective of the natural right of self-ownership. But it makes far more sense if we understand it from the perspective of the evangelical crusade to eliminate sin from American society. This obligation came directly from God, not from a theory of rights.^[58]

Endnote

^[58.] I am currently writing a series of essays on the abolitionists and prohibition. It begins with "Abolitionism: Slavery as Sin," at <https://www.libertarianism.org/columns/abolitionism-slavery-sin>. See the subsequent essays for more information.

DOUGLASS ON DUTY: MUST WE CARE ABOUT THE RIGHTS OF OTHERS?

by Nicholas Buccola

Both George Smith and Peter Myers suggest there might be more to say about what Myers calls "the question" at the heart of our dispute over duty: "if self-ownership is the basis of natural rights, how can we derive a principle of positive natural duty?" Myers concedes that my interpretation of Douglass is correct on this point – that he did indeed believe we had a duty to defend the natural rights of others – and Smith quibbles less with my interpretive position than my normative one: that I regard Douglass's position as morally superior to one that has no room for a general duty to vindicate the rights of others. Myers pushes me to go further in my explanation of "the grounds" of Douglass's view, and such a challenge is implied in Smith's impressive defense of a view at odds with Douglass, that we have "no duty" to "help those in need" and no "obligation to protect others from harm."

Before I elaborate on what I take to be Douglass's justification for his position on duty and why I think he was basically right, please allow me to say a brief word on how he did not ground this view. At the conclusion of his comment, Smith suggests that the foundation of the "crusade against slavery" for "most abolitionists" was their "religious beliefs." This may be true of "most abolitionists," and there is little doubt that Douglass was, in a sense, deeply religious, but I do not think this explanation is satisfactory in his case. Indeed, Douglass rejected this conception of duty time and again. Late in life, as he reflected on his nearly six decades of activism, he said: "In the essential dignity of man as man, I find all necessary incentives and aspirations to a useful and noble life."^[59] This was a rather cryptic comment made in the context of a speech on education, but a few years earlier Douglass attempted a rather detailed defense of his basic idea in another speech called, "It Moves, or The Philosophy of Reform." In the space available here, I cannot do this long and complex speech justice. I do

think a brief explanation of some of its central ideas, though, may provide us with the key to unlocking the mystery of the grounding of Douglass's robust sense of duty.



Frederick Douglass

The year was 1883, and Douglass was invited to deliver a lecture at the Metropolitan A.M.E. Church in Washington, D.C. His topic was "The Philosophy of Reform."^[60] The topic was not merely of philosophical interest to Douglass. It was, rather, an opportunity for him to offer a detailed defense of his view that we have an affirmative obligation to promote justice. Let's limit ourselves, for the purposes of this discussion, to the idea that justice entails acting in such a way that will move us closer to a state of affairs in which the natural rights of more people are respected and protected. Douglass's thesis in the speech is that we have a duty to do what we can to bring man "more and more into harmony with the laws of his own being."^[61] Again, these words may at first seem a bit mysterious and even mystical, but Douglass was appealing directly to the moral vocabulary of the natural-rights tradition: human beings, he argued elsewhere, are "free by the laws of nature" in the sense that they possess desires and capacities that make them fit to be free.^[62] To bring man more into harmony with the "laws of his own being" meant, for Douglass, to bring about a state of affairs in which human beings could exercise their freedom.^[63] For Douglass, this justification for rights was the grounding for what Smith

calls "the 'negative' duty (or moral obligation) to abstain from violating" the rights of others. That is where Smith's conception of duty stops and Douglass's keeps on going: this idea also provides the grounding for the affirmative obligation to vindicate the rights of others. Man, Douglass declared in the "Philosophy of Reform" speech, "has a dignity which belongs to himself alone," and that dignity should prevent him from allowing any "rest to his soul while any portion of his species suffers from a recognized evil. The deepest wish of a true man's heart is that good may augmented and evil, moral and physical, be diminished, and that each generation shall be an improvement on its predecessor."^[64] The appeal to truth here is, I think, significant. Douglass thought our affirmative obligation to promote justice was rooted in the same essential truths about humanity – most importantly, the capacity to know and act upon morality – that serve as the foundation for our rights.

Let's bring this rather abstract conversation down to the ground Douglass occupied before the Civil War. He was looking at a country in which the natural rights of millions of people were being systematically violated by nonstate actors with the active and passive support of several levels of government. In the face of this injustice, Douglass argued, we have not done the sum of our duty if we have merely abstained from violating the rights of other people.^[65] Instead, Douglass believed we had an affirmative obligation (or imperfect duty or whatever else we may want to call it) to use our "political as well as moral power" to attempt to bring about a state of affairs in which those natural rights were respected.^[66] As Myers points out, this seems to "amount to a natural claim upon the labor or actions of others," and this view is a clear departure from Smith's idea that "positive duties" are "purely a matter of individual choice." In other words, Myers and Smith are correct that Douglass's robust conception of duty is in philosophical tension with his idea of self-ownership. I am still convinced, though, that Douglass has the morally superior position. In the face of philosophical heavyweights like Myers and Smith, I feel ill-equipped to offer the defense of Douglass's position it deserves. I only wish Douglass could come back and give a great speech entitled, "What to the Slave

Is a Theory of Natural Rights that Doesn't Include a Positive Duty to Protect Natural Rights?"^[67]

Endnotes

^[59.] Frederick Douglass, "The Blessings of Liberty and Education," in *The Essential Douglass*, 357.

^[60.] Frederick Douglass, "It Moves, or the Philosophy of Reform," in *The Essential Douglass*, 286.

^[61.] *Ibid.*, 288.

^[62.] As quoted in Nicholas Buccola, *The Political Thought of Frederick Douglass*, 49.

^[63.] The desire and capacity to be free was not, according to Douglass, the only "law of our being," but it was of the utmost importance in his moral and political thought and, given the nature of our discussion, I will limit my discussion to this "law" here.

^[64.] Frederick Douglass, "It Moves, or The Philosophy of Reform,"

^[65.] I will set aside, for the moment, the question of indirect responsibility for the institution of slavery that extended throughout the country as a result of consumption practices that helped perpetuate the institution.

^[66.] Frederick Douglass, "Change of Opinion Announced," in *The Essential Douglass*, 43.

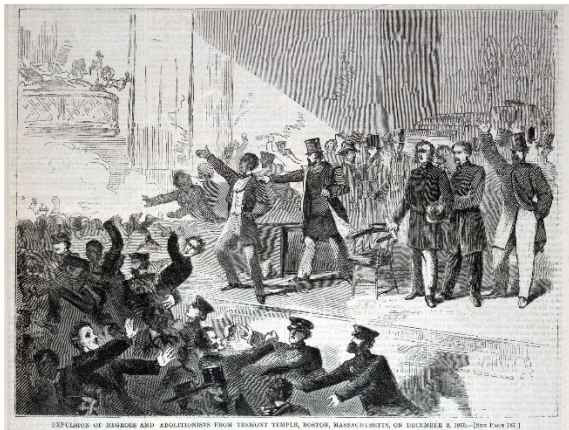
^[67.] I am sure Douglass would come up with a better title.

CAN WE TAKE FREDERICK DOUGLASS'S "CHANGE OF OPINION" SERIOUSLY?

by Helen J. Knowles

During the 1850s a significant percentage of abolitionists began to move away from a nonviolent response to slavery. Increasingly, they infused their writings with calls to arms; some went further, becoming involved in endeavors that were designed to, and sometimes actually did, result in violent confrontations with Slave Power.

Into the 1850s the futility of actions grounded in peaceful principles became more apparent. As James Brewer Stewart observes: "Two decades of preaching against the sin of slavery had yielded, not emancipation, but an increase to over four hundred thousand black people held in bondage."^[68] The passage of the 1850 Fugitive Slave Act ([see below](#)) – which served as the principal trigger for this new wave of more aggressive abolitionist activism – also exposed the futility of antislavery constitutionalism grounded in a commitment to the "proper" rules of interpretation. So, in this, my final contribution to this interesting discussion about Frederick Douglass, I pose the following question: can we take Frederick Douglass's "change of opinion" about the relationship between slavery and the Constitution seriously?



In a quest to answer this question, I think a good place to start might be Robert Cover's admonition to us to remember that the prevailing definition of law during the antebellum period was "not simply words in instruments. It was the fabric of purposes and motives associated with the men who wrote them. Even when men proclaimed and declared 'natural' rights, it was not the natural but the human fabric that gave it its shape and import." Consider the "moral-formal" dilemma about which Cover wrote so eloquently and incisively in his landmark *Justice Accused*.^[69] For judges who sought to accommodate "the natural law tradition" into their interpretation of laws, there were three main options. One could (a) determine that the authors of a law had intended it to further a goal that was consistent with natural law; (b) identify situations when natural law could aid in the application of a law; or (c) conclude that natural law should trump positive law

unless the language of that law explicitly (in other words, textually) stated otherwise.^[70]

The Constitution was a clear example of a law that, for numerous reasons, lent itself to antislavery interpretations consistent with one or both of these first two options. However, at the intellectual center of his interpretive theory Lysander Spooner placed a rule that invoked option three. Spooner found that rule in *United States v. Fisher*,^[71] an opinion accurately described as "the Marshall Court's most extensive discourse on interpretive methodology."^[72] Although better known as an exposition on the Necessary and Proper Clause (predating *McCulloch v. Maryland*),^[73] *Fisher* was of relevance to Spooner because of the one passage of Chief Justice Marshall's opinion that read as follows: "Where rights are infringed, where fundamental principles are overthrown, where the general system of the laws is departed from, the legislative intention must be expressed with irresistible clearness to induce a court of justice to suppose a design to effect such objects."^[74] In Spooner's opinion, the "[reasonableness, propriety, and therefore truth](#)" of the *Fisher* rule were proven by the fundamental principles of natural justice.^[75]

When employing Spooner's theory, Douglass frequently cited this rule; that, I think, tells us much about Douglass's change of opinion. This is because the rule leaves open the possibility that a law that violated natural rights could be perfectly constitutional as long as "the legislative intention" was "expressed with irresistible clearness to induce a court of justice to suppose a design to effect such objects." The Fugitive Slave Act did just that. It "evinced a clear congressional policy favoring harsh and summary enforcement of the rendition policy over any solicitude for procedural or substantive rights of alleged fugitives.... [T]here was substantially less room for the outlet of principled preference for liberty, which operated in more amorphous doctrinal situations."^[76]

As I have argued in my earlier contributions to this discussion, I think there is merit in viewing Douglass's change of opinion as driven by principled pragmatism. If we return to that theme here, in conclusion I am left wondering whether it was the passage of the Fugitive

Slave Act that pushed Douglass over the edge of the unconstitutionality of slavery cliff. The pragmatic Douglass had to realize that the Fugitive Slave Act was the result of the pitiful politics of 1850. The *Fisher* rule gave the principled Douglass a way to explain that all hope was not yet lost. Yes, it was possible that rights would be infringed and fundamental principles overturned when the general system of the laws was departed from, *as long as* that legislative intention was expressed with irresistible clearness – as it was in the law of 1850. But "the general system of the laws" had to be departed from, and supreme law within that "general system of laws" was the Constitution. And until that was overturned, it would stand proud as the last best hope for the country, a country that would eventually – by amending that very same document – declare that slavery was indeed unconstitutional.

Endnotes

[68.] James Brewer Stewart, *Holy Warriors: The Abolitionists and American Slavery*, revised ed. (New York: Hill and Wang, 1997), 156 (quotation), and generally chapter seven.

[69.] Robert M. Cover, *Justice Accused: Antislavery and the Judicial Process* (New Haven, CT: Yale University Press, 1975), 60.

[70.] *Ibid.*, 62.

[71.] 6 U.S. (2 Cranch) 358 (1805).

[72.] John Choon Yoo, "Note: Marshall's Plan: The Early Supreme Court and Statutory Interpretation," *Yale Law Journal* 101 (1992), 1619.

[73.] 17 U.S. 316 (1819).

[74.] 6 U.S. at 390, *quoted in* Lysander Spooner, *The Unconstitutionality of Slavery*, reprinted in *The Collected Works of Lysander Spooner, Vol. IV: Anti-Slavery Writings*, ed. Charles Shively (Weston, MA: M & S Press 1971), 18-19.

[75.] *Ibid.*, 155.

[76.] Cover, *Justice Accused*, 121.

FREDERICK DOUGLASS ON ABRAHAM LINCOLN

by George H. Smith

In "On Douglass and Righteous Violence," Peter C. Myers characterizes Frederick Douglass and Abraham Lincoln as "the two greatest apostles of the natural-rights doctrine in 19th-century America." Although Douglass is certainly a reasonable candidate for this high ranking, I was surprised by the inclusion of Lincoln, who would not even make my top-100 list.



Emancipation Proclamation

Many abolitionists were highly critical of Lincoln and did not warm up to him until after the Emancipation Proclamation (Jan. 1, 1863). Although Lincoln was genuinely opposed to slavery, he attacked abolitionists and advocated a number of policies that they abhorred, such as colonization and gradualism. Lincoln was commonly seen by abolitionists as an opportunist who sacrificed antislavery principles to political expediency. Even 11 years after Lincoln's assassination, Douglass, during his "Oration in Memory of Abraham Lincoln" (April 14, 1876), while praising Lincoln as a great man, could not resist mentioning his many faults in regard to slavery and race.

Lincoln, Douglass said to a predominantly black audience, "was preeminently the white man's President, entirely devoted to the welfare of white men. He was ready and willing at any time during the first years of his administration to deny, postpone, and sacrifice the rights of humanity in the colored people to promote the welfare of the white people of this country."^[77] Douglass continued:

He came into the Presidential chair upon one principle alone, namely, opposition to the extension of slavery. His arguments in furtherance of this policy had their motive and mainspring in his patriotic devotion to the interests of his own race. To protect, defend, and perpetuate slavery in the states where it existed Abraham Lincoln was not less ready than any other President to draw the sword of the nation. He was ready to execute all the supposed guarantees of the United States Constitution in favor of the slave system anywhere inside the slave states. He was willing to pursue, recapture, and send back the fugitive slave to his master, and to suppress a slave rising for liberty, though his guilty master were already in arms against the Government. The race to which we belong were not the special objects of his consideration.^[78]

Douglass asserted that Lincoln "loved Caesar less than Rome" and that "the Union was more to him than our freedom."^[79] So why should black people venerate Lincoln as a great man? The explanation given by Douglass is vague and borders on mysticism at times. Lincoln, whatever his failings may have been, was "at the head of a great movement" that would inevitably lead to the abolition of slavery. Under his "wise and beneficent rule" racial prejudice was "rapidly fading away," especially as black men were permitted to enlist in the Union army and fight for their own freedom.^[80] Especially significant for Douglass was the Emancipation Proclamation, even though it was expressly presented as a "fit and necessary war measure" for suppressing the rebellion and emancipated only those slaves in areas controlled by the Confederates.

Although Douglass's remarks about Lincoln are open to different interpretations, he seems to have regarded Lincoln as the proverbial Great Man who was compelled by the forces of history to do the right thing. But he did not seem to regard Lincoln as one of the greatest apostles of natural rights of his time. Douglass probably would have reserved that high honor for William Lloyd Garrison, Wendell Phillips, Gerrit Smith, and other fellow abolitionists.

Endnotes

^[77.] *Frederick Douglass: Selected Speeches and Writings*, ed. Philip S. Foner, abridged by Yuval Taylor (Chicago: Lawrence Hill Books, 1999), 618.

^[78.] *Ibid.*

^[79.] *Ibid.*, 620.

^[80.] *Ibid.*

LINCOLN ON NATURAL RIGHTS AND ABOLITION

by Peter C. Myers

I had intended in this post to return to the subject of Douglass and John Brown, a further discussion of which I promised in my first post. In the meantime, however, George Smith has taken exception to my high ranking of Lincoln as an apostle of natural rights and has enlisted Douglass in support of his position. These are subjects, especially the latter, that I have taken up in print previously, and I'm happy to return to them now.

In sum: as to Lincoln's worthiness of the high ranking I assign him, I stand my ground. And as to Douglass's assessment of Lincoln, it's a complicated matter—even more complicated than Douglass himself rendered it in the Freedmen's Monument speech—but I think the evidence weighs in favor of a more laudatory view than Smith suggests.



Abraham Lincoln

My estimation of Lincoln as a pre-eminent 19th-century apostle of natural rights is based mainly on two considerations. First is the depth of Lincoln's conviction of the truth and the importance of the natural-rights argument, and second is the unparalleled prudence with which Lincoln advanced the natural-rights cause in American political life in the face of what was surely the gravest challenge to it in the 19th century and perhaps its gravest challenge in the whole of U.S. history.

To establish the depth of Lincoln's natural-rights conviction, it would be easy to assemble a tediously long train of quotations. A few can suffice.

As he made his way out to Washington to assume the presidency, Lincoln stopped in Philadelphia, where he said this in a speech at Independence Hall: "You have kindly suggested to me that in my hands is the task of restoring peace to our distracted country. I can say in return, sir, that all the political sentiments I entertain have been drawn, so far as I have been able to draw them, from the sentiments which originated, and were given to the world from this hall in which we stand. I have never had a feeling politically that did not spring from the sentiments embodied in the Declaration of Independence."[\[86\]](#)

In an 1860 autobiographical sketch, Lincoln wrote (in third person) of his 1854 return to electoral politics: "the repeal of the Missouri Compromise aroused him as he had never been before."[\[87\]](#) Why was this? Lincoln supplied the answer in his 1854 speech on the subject, and he reiterated it in his 1858 debates with Stephen A. Douglas. "The spirit of seventy-six and the spirit of Nebraska, are utter antagonisms," he said in that 1854 speech. Douglas's Kansas-Nebraska Act, which effected the repeal of the Missouri Compromise, portended by that fact a repeal of the Declaration of Independence itself, which Lincoln considered to be "the sheet anchor of American republicanism," containing indeed "the very fundamental principles of civil liberty."[\[88\]](#)

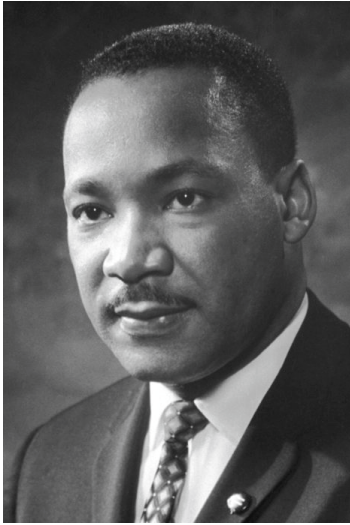
In the first of their debates in 1858, Lincoln charged against Douglas: "when he says that the negro has nothing in the Declaration of Independence.... When he invites any people willing to have slavery, to establish it, he is blowing out the moral lights around us. [Cheers.] When he says he 'cares not whether slavery is voted down or voted up,'—that it is a sacred right of self-government—he is in my judgment penetrating the human soul and eradicating the light of reason and the love of liberty in this American people."[\[89\]](#)

Smith, however, bases his relatively low estimation of Lincoln not mainly on the question of Lincoln's antislavery convictions but rather on Lincoln's disapproval of abolitionism. I take it he generally agrees with abolitionists' characterization of Lincoln, as he puts it, "as an opportunist who sacrificed antislavery principles to political expediency." With due respect both to Smith and to Lincoln's abolitionist (and neo-abolitionist and libertarian) critics, I think this characterization of Lincoln is just plain wrong.

It is of course true that Lincoln disapproved of abolitionism, but it is vital—it marks the only substantial difference, as Lincoln might say—to add that the disagreement is located on grounds of prudence rather than of principle. In that contest of prudence, I think, Lincoln wins hands down.

In the course of my daily labors researching a project on Martin Luther King, Jr., serendipity brought to my

attention today King's remark, approvingly quoting another: "When you are right, you cannot be too radical."^[90] Something like that sentiment also animated King's forbears the radical abolitionists, including William Lloyd Garrison above all, but also, from time to time, Frederick Douglass. Lincoln, however, is in my view sensible in rejecting it. Yes, actually, even if you are right, you can be too radical. The abolitionists were both.



Rev. Dr. Martin Luther King, Jr.

Of course abolitionists were right to denounce slavery as a monstrous wrong. "If slavery is not wrong," Lincoln agreed, "then nothing is wrong."^[91] They were right to campaign against it. The political abolitionists whom Douglass joined after breaking with the Garrisonians were right to make it an issue in electoral politics. They were not right, however, to denounce Free-Soil Whigs, then Republicans like Lincoln, as amoral agents of expediency for espousing the non-extension rather than the immediate-abolition position. Their insistence on the latter position rendered the Liberty Party in its various iterations a hopeless electoral failure; their abolitionist purity showed itself in practice to be mere fecklessness. Lincoln's non-extension position, by contrast, got him elected to the presidency and thus positioned to become the Great Emancipator.

That was not mere expediency. It was a principled antislavery position, prudently compromised to prepare further antislavery advances. Had Lincoln actually been willing to sacrifice antislavery principles to expediency, he

would have backed away from the non-extension position when southerners made clear they would secede over it; he would likewise have accepted the Crittenden Compromise in the secession winter. He refused to do such things because the only Union worth preserving to him was a Union wherein slavery remained, in the public mind, "in the course of its ultimate extinction." Similarly, as I said in a previous post, had Lincoln taken Douglass's and other abolitionists' advice to make the Civil War prematurely an abolition war, he likely would have lost the war and the antislavery cause with it.

In sum, for these reasons and others I think Lincoln stands above all American statesmen as the most articulate and effective defender of the natural-rights principles of the Declaration.

The question remains as to Frederick Douglass's judgment of Lincoln. About that I have things to say, too, but the present post has become lengthy. I'll leave it for the next installment.

Endnotes

^[86.] Abraham Lincoln, "Address in Independence Hall," February 22, 1861, in *Abraham Lincoln: His Speeches and Writings*, edited by Roy P. Basler (Cambridge, MA: Da Capo Press, 2001), 577.

^[87.] Lincoln, "Autobiography written for John L. Scripps," c. June 1860, Roy P. Basler et al., eds., *The Collected Works of Abraham Lincoln* (New Brunswick, NJ: Rutgers University Press, 1953-55), vol. 4, 67.

^[88.] Lincoln, "Speech on the Repeal of the Missouri Compromise," October 16, 1854, *Speeches and Writings*, 315, 304, 291.

^[89.] Lincoln, "Lincoln-Douglas Debates: First Debate," August 21, 1858, 460.

^[90.] Martin Luther King, Jr., *Why We Can't Wait* (New York: New American Library, 1963), 133.

^[91.] Lincoln to Albert G. Hodges, April 4, 1864, *Collected Works* vol. 7, 281.

DOUGLASS ON LINCOLN

by Peter C. Myers

Following up on my previous post, I turn to the second subject of George H. Smith's 5/26 post, concerning Douglass's judgment of Abraham Lincoln. Smith asserts in summary that Douglass did not share the high opinion I expressed of Lincoln in my initial post in this forum, regarding Lincoln as one of 19th-century America's two preeminent apostles of the natural-rights doctrine. Douglass, he says, probably would have accorded that honor to another abolitionist, such as perhaps William Lloyd Garrison, Wendell Phillips, or Gerrit Smith.



Charles Sumner

To that list, for what it's worth, I would add Charles Sumner—"our peerless Charles Sumner," Douglass, who did tend to be somewhat free in his use of superlatives, called him. Another time he described Sumner as higher than the highest and better than the best of our statesmen. On the general point, Smith is likely correct in opining that my estimation of Lincoln is higher than Douglass's estimation of Lincoln and that Douglass held the greatest among the abolitionists in special esteem.

Smith goes further, however, in saying that Douglass harbored an actually diminishing opinion of Lincoln, regarding him "as the proverbial Great Man who was compelled by the forces of history to do the right thing."

Granted, Douglass said things here and there about Lincoln that would seem to corroborate that opinion, especially in the Freedmen's Monument speech upon which Smith relies. For that matter, Lincoln himself conveyed that impression when he stated that "events have controlled me."[\[81\]](#) Nonetheless I think that judgment of Lincoln is mistaken, and I also think it was not, in fact, Douglass's considered judgment.

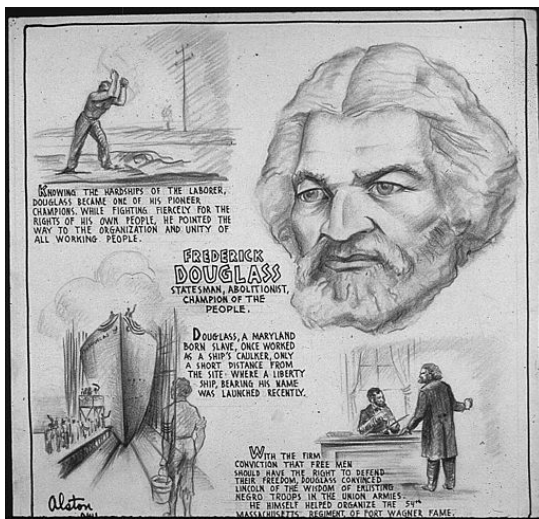
I have written elsewhere at greater length about the Douglass-Lincoln relationship, focusing especially on Douglass's judgment of Lincoln.[\[82\]](#) Here I can only mention a few salient points.

It is well known that Douglass was harshly critical of Lincoln for roughly the first half of Lincoln's presidency. He thought Lincoln indifferent to the moral question of slavery and sluggish in his prosecution of the war. This is the critique of Lincoln that he reprised in the Freedmen's Monument speech, and Smith takes that critique as representative of Douglass's considered, comprehensive judgment of Lincoln. Therein, I think, lies his mistake.

In that speech Douglass spoke, as he did in another of his greatest speeches, his Fourth of July oration in 1852, in more than one voice, from more than one perspective. He called the perspective critical of Lincoln "the genuine abolition ground," and he contrasted that perspective with the perspective of the "statesman," the man charged with taking a comprehensive view of the country's well-being. It is clear in context that Douglass considered the latter the superior perspective, and from that point of view Lincoln appeared "swift, zealous, radical, and determined" in the cause—for it was, as Lincoln saw and Douglass came to see, a single cause—of opposition to slavery *and* preservation of the Union.[\[83\]](#)

If Douglass judged the statesman's perspective superior, then why—in a speech, after all, on an occasion that called for a pure, glowing eulogy of Lincoln—did Douglass give voice to the abolitionist critique at all? Why, especially, did he call Lincoln "pre-eminently the white man's president" on an occasion dedicating a monument that, as the monument's inscription says, the "emancipated citizens" of the nation commissioned in gratitude to their fallen liberator?

I don't think Douglass ever quite relinquished that "genuine abolition ground," as his enduring praise for John Brown attests. Still, it is helpful here to know that Douglass's statement appears as a reversal of the judgment that Douglass himself had expressed in a eulogy of Lincoln 11 years previous to the 1876 occasion. In that June 1865 eulogy, Douglass stated, "Abraham Lincoln ... was ... in a sense hitherto without example, *emphatically the black man's president.*"^[84] There is no reason to think Douglass reversed this judgment between 1865 and 1876. More likely, Douglass judged it for some reason unwise or imprudent to say in 1876 about Lincoln what he had said in 1865.



The key to answering the question I put in the preceding paragraph appears at the close of the 1876 speech. Douglass said in closing, "Fellow citizens ... [w]e have done a good work for our race to-day."^[85] What was that good work? In brief, I submit that to advance the cause of liberty for black Americans, Douglass found it necessary at once to exalt and to diminish the luster of Lincoln's heroism.

Douglass wanted Lincoln to serve as a model to whites, which required Douglass to downplay the degree to which he thought Lincoln transcended race prejudice. The idea was that if someone who also shared some of that prejudice could overcome it to perform a great public service for a despised group, so could they. On the other hand, for black Americans Lincoln could be no more than a uniquely beneficent "step-father," because absent

voting rights for all, the very greatest democratic statesmen can never be more than stepfathers or accidental benefactors. Douglass's ambivalence in that speech reflects his twofold purpose to venerate Lincoln and to deplore the condition that reduced blacks to a dependency on a savior-figure such as Lincoln—and so to remind them of their urgent need and responsibility to strive to overcome that condition.

One final, complicating note. Robert S. Levine, professor of English at the University of Maryland, has a new literary biography of Douglass (*The Lives of Frederick Douglass*) that presents, among many other interesting things, a challenging interpretation of the Douglass-Lincoln relation juxtaposed with the Douglass-John Brown relation. I confess his argument complicates my understanding of the relation a bit, but those interested in the subject can read it and come to their own judgments.

Endnotes

^[81.] Lincoln to Albert G. Hodges, April 4, 1864, *Collected Works* vol. 7, 281.

^[82.] See Peter C. Myers, "Stepfather Abraham: Frederick Douglass's Contribution to Lincoln Lore," *Lincoln Lore* 1901 (Fall 2012), 8-15, and "'A Good Work for Our Race To-Day': Interests, Virtues, and the Achievement of Justice in Frederick Douglass's Freedmen's Monument Speech," *American Political Science Review* vol. 104, no. 2 (May 2010), 209-225.

^[83.] Douglass, "Oration on the Occasion of the Unveiling of the Freedmen's Monument in Memory of Abraham Lincoln," April 14, 1876, in *The Essential Douglass*, edited by Nicholas Buccola (Indianapolis: Hackett Publishing Company, 2016), p. 245.

^[84.] "Lincoln, Abraham, folder 3, Page 12," *Douglass Papers at the Library of Congress*, <https://www.loc.gov/resource/mfd.31017/?sp=12> (author's emphasis).

^[85.] Douglass, "Freedmen's Monument," 248.

LINCOLN, DOUGLASS, AND SLAVERY

by George H. Smith

According to Abraham Lincoln, claims Peter Myers, the only Union worth preserving would be one in which slavery was on a path to its "ultimate extinction." This of course was a major rationale for the Free Soil Party. If slavery could be prevented from expanding it would eventually die of its own accord. (The other major rationale of Free-Soilism was the hope that non-extension would keep blacks out of the territories and future states. This is why Garrison attacked the Free Soil Party as the "white manism" party.) I believe that the belief in the natural extinction of slavery was a pleasant myth, one dissected as early as 1776 by Adam Smith in *The Wealth of Nations*. It was a myth that soothed the consciences of many antislavery politicians who did not want to risk their political careers by embracing abolitionism.



Adam Smith

But let's put these theoretical conjectures aside and focus on what Lincoln had to say on this controversy. True, as a gradualist, Lincoln truly believed that slavery would eventually die a natural death (especially if encouraged by compensation to slaveholders), but in one of his debates with Stephen Douglas (1858) he speculated that this

process might take as long as 100 years. The fact that, according to this prediction, slavery would have existed in the United States until 1958 didn't seem to bother the Great Emancipator, so long as slavery was on the path to extinction. I doubt if the 100-year timeline provided much comfort to those living slaves who were to endure their oppression for the rest of their lives.

There were many differences between abolitionists and gradualists (including Lincoln), but it is important to understand the fundamental point of contention. As William Lloyd Garrison put it in 1860, abolitionists were united in the belief that "the right of the slave to himself [is] paramount to every other claim."^[92] In other words, it was not antislavery beliefs per se that were critical here, but the *priority* that an opponent of slavery gave to emancipation over other considerations. No person had the right to say to a slave, in effect: "Yes, slavery is a monstrous injustice, and you should be free. But to free you immediately would cause various social, economic, and political problems that we, the white folks, are unwilling to endure. So you will remain a slave until we deem it convenient to liberate you."

Although my characterization is a bit sarcastic, it accurately represents the arguments of gradualists. The gradualist Lincoln was no exception. He protested (before the Civil War) that the crusade for immediate emancipation endangered the Union and that without the Union the liberty of everyone would be in jeopardy. The slaves would therefore have to live in brutal oppression indefinitely for the sake of a greater good, until white folks decided that the time was right for them to live as free human beings. The abolitionists saw red when confronted with this kind of argument. For them freedom is a natural right that should be immune to cynical social and political calculations.

Myers correctly observes that many antislavery quotations from Lincoln are available. But these remarks tend to be very general and could have come from thousands of Americans. Things could get ugly, however, when Lincoln descended to particulars, as we see in this passage from the Lincoln-Douglas debates:

I will say then that I am not, nor ever have been in favor of bringing about in any way the social and political equality of the white and black races,—that I am not nor ever have been in favor of making voters or jurors of negroes, nor of qualifying them to hold office, nor to intermarry with white people; and I will say in addition to this that there is a physical difference between the white and black races which I believe will for ever forbid the two races living together on terms of social and political equality.^[93]

These remarks could not be clearer, but in some hagiographical accounts of Lincoln, no effort is spared to explain them (and similar comments) away. Lincoln's view of slavery and civil rights evolved over time, we are told—though I know of no evidence that Lincoln changed his beliefs between 1858 and his inauguration as president in 1861. Or perhaps Lincoln softened his views on equal rights during the debates because he did not wish to alienate Illinois voters. Or, to speak more plainly, maybe Lincoln lied for the sake of gaining political power. But I take Lincoln at his word, even if his words take him out the running as one of the great champions of human rights during the 19th century.

At one point Myers (as I understand him) suggests that the major difference between Lincoln and Frederick Douglass was between principle and prudence. Lincoln, savvier than Douglass, understood that to wage a civil war for abolition would be a bust. It would almost certainly have lost the border slave states to the Confederacy, and many northerners would not have fought to end slavery—so Lincoln prudently omitted slavery from his rationale for war.



The Stampede at Bull Run

There is no evidence to support this interpretation. Lincoln stated many times that his primary purpose in waging war was to save the Union, not to end slavery. One of his most unambiguous statements appeared in a response to Horace Greeley, who had criticized Lincoln for failing to make the Civil War a war for abolition. Lincoln replied, in part:

My paramount object in this struggle *is* to save the Union, and it is *not* either to save or to destroy slavery. If I could save the Union without freeing *any* slave I would do it; and if I could save it by freeing *all* the slaves I would do it; and if I could save it by freeing some and leaving others alone I would also do that. What I do about slavery and the colored race, I do because I believe it helps to save the Union; and what I forbear, I forbear because I do *not* believe it would help to save the Union.^[94]

Lincoln, with his dedication to Whig principles, was an extreme nationalist who prized the preservation of the Union above every other political goal, including the abolition of slavery. Douglass and other abolitionists understood that Lincoln engaged in war with no intention of eradicating slavery, but they hoped that a policy of emancipation would be forced upon him as a necessary war measure, which is indeed what happened. (A common argument was that slave owners would need to devote more manpower to guarding their plantations if the slaves knew that they could escape to freedom.) Even after the Emancipation Proclamation (Jan. 1, 1863),

Douglass could barely conceal his disgust at Lincoln's lack of "moral feeling." After praising the Emancipation Proclamation as a "vast and glorious step in the right direction," Douglass went on to say:

Our chief danger lies in the absence of all moral feelings in the utterances of our rulers. In his letter to Mr. Greeley the President told the country virtually that the abolition or non-abolition of Slavery was a matter of indifference to him. He would save the Union with Slavery or without Slavery. In his last Message he shows the same moral indifference, by saying as he does say that he had hoped that the Rebellion could be put down without the abolition of slavery.

When the late Stephen A. Douglas uttered the sentiment that he did not care whether Slavery were voted up or voted down in the Territories, we thought him lost to all genuine feeling on the subject, and no man more than Mr. Lincoln denounced that sentiment as unworthy of the lips of any American statesman. But today, after nearly three years of a Slaveholding Rebellion, we find Mr. Lincoln uttering substantially the same heartless sentiments.^[95]

In my opinion, even more serious was Lincoln's willingness to sacrifice 620,000 American lives in a bloody war for the sake of preserving the Union. There was nothing "irrepressible" about that conflict, and the world would not have imploded if the Confederacy had been permitted to secede in peace. Historians commonly mention Lincoln's admiration of the Declaration of Independence, but Lincoln seems to have overlooked the fact that Jefferson expressly wrote the Declaration as a defense of the right of secession. Lincoln, in stark contrast, denounced the right of secession as the "essence of anarchy." Lysander Spooner was among the very few abolitionists who understood the crucial difference between the evil of slavery and the right of secession, and who therefore defended the South's right to secede. Lincoln trails far behind Spooner and other abolitionists as a leading defender of natural rights in the 19th century.

Endnotes

[92.] William Lloyd Garrison, *The Infidelity of Abolitionism* (New York: American Anti-Slavery Society, 1860), in *The Antislavery Argument*, ed. William and Jane Pease (Indianapolis, IN: Bobbs-Merrill, 1965), 129.

[93.] Quoted in Eric Foner, *The Fiery Trial: Abraham Lincoln and American Slavery* (New York: W.W. Norton & Co., 2010), 107.

[94.] Quoted in David Herbert Donald, *Lincoln* (New York: Simon & Schuster, 1995), 368.

[95.] "The Mission of the War" (December 1863), in *Frederick Douglass: Selected Speeches and Writings*, ed. Philip S. Foner, abridged by Yuval Taylor (Chicago: Lawrence Hill Books, 1999), 560.

VINDICATING LINCOLN: AN ENCORE

by Peter C. Myers

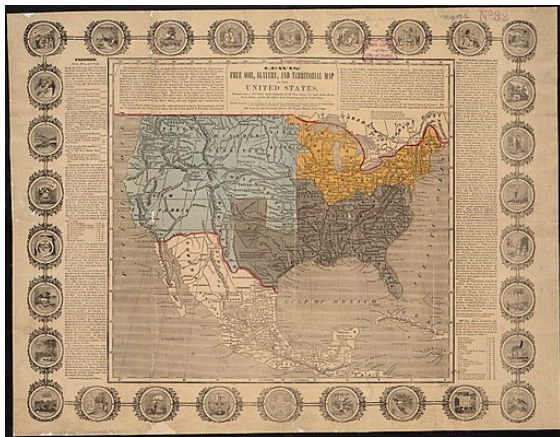
Tempting as it may be on this, our final day for postings, to let the matter go, George Smith's latest post moves me to take one more crack at making the case for Lincoln. First a word of appreciation for Mr. Smith: no one will be surprised to see that I remain in Lincoln's corner, but I think Smith's postings, especially the latest, contain the most challenging and stimulating briefly stated case against Lincoln I have encountered. Here are my responses to some of his most important points.

Gradualism versus immediatism

The abolitionist critique of gradualism makes sense only on the premise that immediate abolition was a realistic possibility. It was not—at least not by any means short of the all-out war against slaveholding states, entailing the deaths of hundreds of thousands, which Smith decries in a later paragraph of his post. Perhaps his objection is to a war against secession, as opposed to a war against slavery. If so, then the question becomes: how many northerners would have enlisted in an explicitly antislavery war in 1861? If immediate abolition could only

have been effected by war and if the number of northerners willing to fight such a war was nowhere near sufficient to win it, then what good would it do—did it do—to make an inflexible demand for immediate abolition? It is well and good to declare that the slave's right to liberty was preeminent, but the question is: how could that right be effectuated if no direct assault on slavery could have had the forces to succeed?

Perhaps there was one strategic course available to an immediatist. The prudent advocate of immediate abolition would have endeavored to broaden and deepen northerners' antislavery sentiment as quickly as possible. That could never have been done by any direct approach only; the abolitionists had been engaged in that sort of endeavor for several decades without substantial progress. Perhaps, however, it could have been done by an indirect approach, by heightening political pressure on the slave power and thereby provoking slaveholding states to overreach—to make demands on the North or to encroach on northerners' rights or on the continuation of their Union and thus to associate slavery with aggression against interests that northerners were willing to fight to defend.



Free Soil, Slavery and Territorial Map

Is that not substantially the course that Lincoln pursued? From the abolitionist or neo-abolitionist perspective, does it not make for a curious irony that the gradualist Lincoln became, in the event, the agent of immediate abolition? I do not suggest that Lincoln conceived this grand strategy prior to the actual conflict, but neither do

I think, as Smith seems to think, that Lincoln's eventual role as emancipator was in the decisive respect accidental.

Gradualism and Lincoln's Moral Intention

To abolitionists, Lincoln's gradualist position appears morally indifferent, as abolitionists including Douglass charged. Again, however, what was the practicable alternative? If the available choice pitted immediate abolition at the cost of hundreds of thousands of lives against gradual abolition, is it reasonable to charge Lincoln with moral indifference for choosing (initially) the peaceful, though long-extended, solution to the problem of slavery?

In sum, there is a case for gradualism that is not reducible to considerations of low expediency, one that in fact rests on considerations of morality and humanity.

A further point is pertinent. Smith makes a common claim in ascribing to Lincoln the opinion that slavery as confined by the non-extension policy "would die a natural death." That formulation is deeply misleading. Non-extension was an intentional policy of confinement, vigorously opposed by slaveholders and their sympathizers, who accurately regarded it as a potentially mortal threat to their institution. That policy would yield a Union in which slavery was increasingly anomalous, increasingly exposed to moral pressure from the surrounding states, and over time subject to a constitutional majority large enough to enact various kinds of legislation hostile to it. Words such as "non-extension," "containment," or "confinement" fail to do full justice to its design. With an apology for the violence of the figure, I think that what Lincoln and slaveholders alike envisioned is better described by the metaphor of a gradually tightening noose. Lincoln's policy portended not slavery's natural death but instead its slow strangulation.

On Lincoln's Intention: The Object of the War

Contrary to Smith's claim, there is much evidence to support the view that Lincoln from virtually the beginning intended and in fact attempted to bring about an antislavery outcome for the war. See Allen

Guelzo, *Lincoln's Emancipation Proclamation: The End of Slavery in America* for the details.^[96]



Horace Greeley

In the famous Greeley letter, there is more, and more interesting, ambiguity than Smith and others, including Douglass, see. The key to Lincoln's statement is not his declaration of a primary purpose to save the Union, which he had said many times previously. The interesting innovation is that here he says for the first time that if to save the Union he had to free some or all the slaves, he would do it. A month later he issued his preliminary emancipation proclamation; the Greeley letter was a trial balloon, testing the public reaction to a firmer emancipation policy than he had previously proposed.

It is worth adding that in his estimation of the ultimate significance of the war—as distinct from his statements of his constitutional duty as president—Lincoln told the Congress on July 4, 1861, essentially what he repeated at Gettysburg: that the war was a war for the perpetuation of republican government, the indispensable justifying principle of which was the natural-rights principle.

There is much to say, too, about Lincoln's alleged racism and about the issue of secession, but regrettably time and space permit nothing further. I conclude with only this parting shot about Lincoln in comparison with Spooner. Whereas Lincoln presided over the preservation of the world's first and only natural-rights republic, Spooner in endorsing secession would have presided over its

dissolution—and would thereby have betrayed the antislavery cause that he had previously labored much to advance.

Thanks to Nick and to all for a very stimulating exchange.

Endnotes

[96] Allen Guelzo, *Lincoln's Emancipation Proclamation: The End of Slavery in America* (New York: Simon & Schuster, 2004).

APPENDIX

The Fugitive Slave Act (1850)

Source

<<http://www.nationalcenter.org/FugitiveSlaveAct.html>
> at The National Center for Public Policy Research

Text

BE IT enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the persons who have been, or may hereafter be, appointed commissioners, in virtue of any act of Congress, by the Circuit Courts of the United States, and Who, in consequence of such appointment, are authorized to exercise the powers that any justice of the peace, or other magistrate of any of the United States, may exercise in respect to offenders for any crime or offense against the United States, by arresting, imprisoning, or bailing the same under and by the virtue of the thirty-third section of the act of the twenty-fourth of September seventeen hundred and eighty-nine, entitled "An Act to establish the judicial courts of the United States" shall be, and are hereby, authorized and required to exercise and discharge all the powers and duties conferred by this act.

SEC. 2. And be it further enacted, That the Superior Court of each organized Territory of the United States shall have the same power to appoint commissioners to take acknowledgments of bail and affidavits, and to take depositions of witnesses in civil causes, which is now possessed by the Circuit Court of the United States; and

all commissioners who shall hereafter be appointed for such purposes by the Superior Court of any organized Territory of the United States, shall possess all the powers, and exercise all the duties, conferred by law upon the commissioners appointed by the Circuit Courts of the United States for similar purposes, and shall moreover exercise and discharge all the powers and duties conferred by this act.

SEC. 3. And be it further enacted, That the Circuit Courts of the United States shall from time to time enlarge the number of the commissioners, with a view to afford reasonable facilities to reclaim fugitives from labor, and to the prompt discharge of the duties imposed by this act.

SEC. 4. And be it further enacted, That the commissioners above named shall have concurrent jurisdiction with the judges of the Circuit and District Courts of the United States, in their respective circuits and districts within the several States, and the judges of the Superior Courts of the Territories, severally and collectively, in term-time and vacation; shall grant certificates to such claimants, upon satisfactory proof being made, with authority to take and remove such fugitives from service or labor, under the restrictions herein contained, to the State or Territory from which such persons may have escaped or fled.

SEC. 5. And be it further enacted, That it shall be the duty of all marshals and deputy marshals to obey and execute all warrants and precepts issued under the provisions of this act, when to them directed; and should any marshal or deputy marshal refuse to receive such warrant, or other process, when tendered, or to use all proper means diligently to execute the same, he shall, on conviction thereof, be fined in the sum of one thousand dollars, to the use of such claimant, on the motion of such claimant, by the Circuit or District Court for the district of such marshal; and after arrest of such fugitive, by such marshal or his deputy, or whilst at any time in his custody under the provisions of this act, should such fugitive escape, whether with or without the assent of such marshal or his deputy, such marshal shall be liable, on his official bond, to be prosecuted for the benefit of such claimant, for the full value of the service or labor of said fugitive in the

State, Territory, or District whence he escaped: and the better to enable the said commissioners, when thus appointed, to execute their duties faithfully and efficiently, in conformity with the requirements of the Constitution of the United States and of this act, they are hereby authorized and empowered, within their counties respectively, to appoint, in writing under their hands, any one or more suitable persons, from time to time, to execute all such warrants and other process as may be issued by them in the lawful performance of their respective duties; with authority to such commissioners, or the persons to be appointed by them, to execute process as aforesaid, to summon and call to their aid the bystanders, or posse comitatus of the proper county, when necessary to ensure a faithful observance of the clause of the Constitution referred to, in conformity with the provisions of this act; and all good citizens are hereby commanded to aid and assist in the prompt and efficient execution of this law, whenever their services may be required, as aforesaid, for that purpose; and said warrants shall run, and be executed by said officers, any where in the State within which they are issued.

SEC. 6. And be it further enacted, That when a person held to service or labor in any State or Territory of the United States, has heretofore or shall hereafter escape into another State or Territory of the United States, the person or persons to whom such service or labor may be due, or his, her, or their agent or attorney, duly authorized, by power of attorney, in writing, acknowledged and certified under the seal of some legal officer or court of the State or Territory in which the same may be executed, may pursue and reclaim such fugitive person, either by procuring a warrant from some one of the courts, judges, or commissioners aforesaid, of the proper circuit, district, or county, for the apprehension of such fugitive from service or labor, or by seizing and arresting such fugitive, where the same can be done without process, and by taking, or causing such person to be taken, forthwith before such court, judge, or commissioner, whose duty it shall be to hear and determine the case of such claimant in a summary manner; and upon satisfactory proof being made, by deposition or affidavit, in writing, to be taken and certified by such court, judge, or commissioner, or

by other satisfactory testimony, duly taken and certified by some court, magistrate, justice of the peace, or other legal officer authorized to administer an oath and take depositions under the laws of the State or Territory from which such person owing service or labor may have escaped, with a certificate of such magistracy or other authority, as aforesaid, with the seal of the proper court or officer thereto attached, which seal shall be sufficient to establish the competency of the proof, and with proof, also by affidavit, of the identity of the person whose service or labor is claimed to be due as aforesaid, that the person so arrested does in fact owe service or labor to the person or persons claiming him or her, in the State or Territory from which such fugitive may have escaped as aforesaid, and that said person escaped, to make out and deliver to such claimant, his or her agent or attorney, a certificate setting forth the substantial facts as to the service or labor due from such fugitive to the claimant, and of his or her escape from the State or Territory in which he or she was arrested, with authority to such claimant, or his or her agent or attorney, to use such reasonable force and restraint as may be necessary, under the circumstances of the case, to take and remove such fugitive person back to the State or Territory whence he or she may have escaped as aforesaid. In no trial or hearing under this act shall the testimony of such alleged fugitive be admitted in evidence; and the certificates in this and the first [fourth] section mentioned, shall be conclusive of the right of the person or persons in whose favor granted, to remove such fugitive to the State or Territory from which he escaped, and shall prevent all molestation of such person or persons by any process issued by any court, judge, magistrate, or other person whomsoever.

SEC. 7. And be it further enacted, That any person who shall knowingly and willingly obstruct, hinder, or prevent such claimant, his agent or attorney, or any person or persons lawfully assisting him, her, or them, from arresting such a fugitive from service or labor, either with or without process as aforesaid, or shall rescue, or attempt to rescue, such fugitive from service or labor, from the custody of such claimant, his or her agent or attorney, or other person or persons lawfully assisting as

aforesaid, when so arrested, pursuant to the authority herein given and declared; or shall aid, abet, or assist such person so owing service or labor as aforesaid, directly or indirectly, to escape from such claimant, his agent or attorney, or other person or persons legally authorized as aforesaid; or shall harbor or conceal such fugitive, so as to prevent the discovery and arrest of such person, after notice or knowledge of the fact that such person was a fugitive from service or labor as aforesaid, shall, for either of said offences, be subject to a fine not exceeding one thousand dollars, and imprisonment not exceeding six months, by indictment and conviction before the District Court of the United States for the district in which such offence may have been committed, or before the proper court of criminal jurisdiction, if committed within any one of the organized Territories of the United States; and shall moreover forfeit and pay, by way of civil damages to the party injured by such illegal conduct, the sum of one thousand dollars for each fugitive so lost as aforesaid, to be recovered by action of debt, in any of the District or Territorial Courts aforesaid, within whose jurisdiction the said offence may have been committed.

Sec. 8. And be it further enacted, That the marshals, their deputies, and the clerks of the said District and Territorial Courts, shall be paid, for their services, the like fees as may be allowed for similar services in other cases; and where such services are rendered exclusively in the arrest, custody, and delivery of the fugitive to the claimant, his or her agent or attorney, or where such supposed fugitive may be discharged out of custody for the want of sufficient proof as aforesaid, then such fees are to be paid in whole by such claimant, his or her agent or attorney; and in all cases where the proceedings are before a commissioner, he shall be entitled to a fee of ten dollars in full for his services in each case, upon the delivery of the said certificate to the claimant, his agent or attorney; or a fee of five dollars in cases where the proof shall not, in the opinion of such commissioner, warrant such certificate and delivery, inclusive of all services incident to such arrest and examination, to be paid, in either case, by the claimant, his or her agent or attorney. The person or persons authorized to execute the process to be issued by such commissioner for the arrest and detention of

fugitives from service or labor as aforesaid, shall also be entitled to a fee of five dollars each for each person he or they may arrest, and take before any commissioner as aforesaid, at the instance and request of such claimant, with such other fees as may be deemed reasonable by such commissioner for such other additional services as may be necessarily performed by him or them; such as attending at the examination, keeping the fugitive in custody, and providing him with food and lodging during his detention, and until the final determination of such commissioners; and, in general, for performing such other duties as may be required by such claimant, his or her attorney or agent, or commissioner in the premises, such fees to be made up in conformity with the fees usually charged by the officers of the courts of justice within the proper district or county, as near as may be practicable, and paid by such claimants, their agents or attorneys, whether such supposed fugitives from service or labor be ordered to be delivered to such claimant by the final determination of such commissioner or not.

SEC. 9. And be it further enacted, That, upon affidavit made by the claimant of such fugitive, his agent or attorney, after such certificate has been issued, that he has reason to apprehend that such fugitive will be rescued by force from his or their possession before he can be taken beyond the limits of the State in which the arrest is made, it shall be the duty of the officer making the arrest to retain such fugitive in his custody, and to remove him to the State whence he fled, and there to deliver him to said claimant, his agent, or attorney. And to this end, the officer aforesaid is hereby authorized and required to employ so many persons as he may deem necessary to overcome such force, and to retain them in his service so long as circumstances may require. The said officer and his assistants, while so employed, to receive the same compensation, and to be allowed the same expenses, as are now allowed by law for transportation of criminals, to be certified by the judge of the district within which the arrest is made, and paid out of the treasury of the United States.

SEC. 10. And be it further enacted, That when any person held to service or labor in any State or Territory,

or in the District of Columbia, shall escape therefrom, the party to whom such service or labor shall be due, his, her, or their agent or attorney, may apply to any court of record therein, or judge thereof in vacation, and make satisfactory proof to such court, or judge in vacation, of the escape aforesaid, and that the person escaping owed service or labor to such party. Whereupon the court shall cause a record to be made of the matters so proved, and also a general description of the person so escaping, with such convenient certainty as may be; and a transcript of such record, authenticated by the attestation of the clerk and of the seal of the said court, being produced in any other State, Territory, or district in which the person so escaping may be found, and being exhibited to any judge, commissioner, or other officer authorized by the law of the United States to cause persons escaping from service or labor to be delivered up, shall be held and taken to be full and conclusive evidence of the fact of escape, and that the service or labor of the person escaping is due to the party in such record mentioned. And upon the production by the said party of other and further evidence if necessary, either oral or by affidavit, in addition to what is contained in the said record of the identity of the person escaping, he or she shall be delivered up to the claimant. And the said court, commissioner, judge, or other person authorized by this act to grant certificates to claimants or fugitives, shall, upon the production of the record and other evidences aforesaid, grant to such claimant a certificate of his right to take any such person identified and proved to be owing service or labor as aforesaid, which certificate shall authorize such claimant to seize or arrest and transport such person to the State or Territory from which he escaped: Provided, That nothing herein contained shall be construed as requiring the production of a transcript of such record as evidence as aforesaid. But in its absence the claim shall be heard and determined upon other satisfactory proofs, competent in law.

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ABOUT THE AUTHORS

[Nicholas Buccola](#) is chair and associate professor of political Science at Linfield College. He is the author of *The Political Thought of Frederick Douglass* (NYU Press) and the editor of *The Essential Douglass: Selected Writings and Speeches* (Hackett) and *Abraham Lincoln and Liberal Democracy* (University Press of Kansas). His essays have appeared in scholarly journals such as *The Review of Politics* and *American Political Thought* as well as popular outlets such as *Salon*, *Dissent*, and *The Claremont Review of Books*.

Helen J. Knowles is an assistant professor of political science at the State University of New York at Oswego. She received her Ph.D. from Boston University. She is the author of *The Tie Goes to Freedom: Justice Anthony M. Kennedy on Liberty* (Rowman and Littlefield, 2009) and co-editor (with Steven B. Lichtman) of *Judging Free Speech: First Amendment Jurisprudence of US Supreme Court Justices* (Palgrave Macmillan, 2015). She is a winner of the Hughes-Gossett Student Award from the Supreme Court Historical Society and has published numerous articles on many different aspects of legal history and law and politics, including the constitutional theory of abolitionist Lysander Spooner.

[Peter C. Myers](#) is Professor of Political Science, specializing in political philosophy and U.S. constitutional law, at the University of Wisconsin-Eau Claire. He is also Visiting Graduate faculty member in the Masters in American History and Government program at Ashland University, and he is 2016-17 Visiting Fellow in the B. Kenneth Simon Center for Principles and Politics at the Heritage Foundation. Professor Myers is the author of two books: *Our Only Star and Compass: Locke on the Struggle for Political Rationality* (1998) and *Frederick Douglass: Race and the Rebirth of American Liberalism* (2008). He has published articles, chapters, and book reviews in the fields of liberal political philosophy, American literature, and American political thought. He is currently researching a book on Martin Luther King, Jr., and the American political tradition.

[George H. Smith](#) is an independent scholar and a weekly columnist at the Cato Institute's [Libertarianism.org](#). He is the author of *Atheism: The Case Against God* (1974), *Atheism, Ayn Rand, and Other Heresies* (1991), *Why Atheism* (2000). He is also the author of the audio series on "Great Political Thinkers," "The Meaning of the Constitution," and "The Ideas of Liberty." He has articles and book reviews published in the *New York Times*, *Newsday*, *Reason*, *Liberty*, *The Journal of Libertarian Studies*, *Free Inquiry*, and *The Humanist*. He has also written the lead essays for 2 previous Liberty Matters discussions on his book "[The System of Liberty](#)" (September 2013) and "[Herbert Spencer's Sociology of the State](#)" (November 2014).

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