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The Founding of Frederick Douglass

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On July 5, 1852, in Rochester, New York, as Frederick Douglass strode to the lectern at the august Corinthian Hall to deliver an Independence Day speech before a packed audience of almost six hundred people, he fought a significant bout of anxiety.

Douglass was not, of course, a man who grew nervous lightly. Even at the tender age of 34, the former slave had already become a prominent abolitionist, an acclaimed author, and a revered orator. Indeed, Douglass rose to fame in no small part due to his ability to exhibit uncommon mettle. As a young man, Douglass not only withstood ritualized beatings at the hands of an infamous "slave breaker," but he also dared to emancipate himself by escaping slavery. Since his entrance into public life, moreover, supporters of the existing racial order sometimes found Douglass's unyielding abolitionist message so vile that they opted to assault the messenger. In 1843, for example, Douglass's remarks promoting racial equality in Pendleton, Indiana, enraged a white mob, who beat him so severely that he suffered a loss of consciousness and a broken right hand.

Such prior brushes with danger, however, did nothing to prevent Douglass from experiencing the jitters in Rochester on that July afternoon as he listened to the Reverend Robert Raymond perform an introductory reading of the Declaration of Independence and prepared to deliver his address. Following the Declaration's recitation, observers noted that Douglass's hands trembled as he gripped his prepared remarks, which he opened by confessing to the assembled masses that he was experiencing "a quailing sensation."[1]

Douglass need not have been worried. When he concluded the speech now known as "What to the Slave Is the Fourth of July?," the audience responded rapturously, leaping to their feet to confer what one person called "a universal burst of applause."[2] Today, even as Douglass's speech begins inching toward its bicentennial, that initial ovation has not yet fully subsided. If anything, the applause has only grown louder.

"What to the Slave Is the Fourth of July?" long ago became required reading in high school and college curricula throughout the nation.[3] Distinguished scholars have, moreover, bathed Douglass's address in a sea of superlatives. Harvard Law School's Randall Kennedy has called it "the most damning critique of American hypocrisy ever uttered."[4] Historian William McFeely labeled it "perhaps the greatest antislavery oration ever given."[5] In David Blight's monumental biography of Douglass, he similarly deemed the address "nothing less than the rhetorical masterpiece of American abolitionism."[6] Going further, Blight called it "one of the greatest speeches of American history," one that "transcended his audience as well as Corinthian Hall" to enter the "realm inhabited by great art that would last long after he and this history were gone."[7]

It is not difficult to understand why Douglass's address has won such fervent admiration. The speech is rhetorically and emotionally powerful, advancing pungent criticism of how the United States has too often failed to honor its lofty ideals. It is hard to imagine a more eloquent spokesman for this proposition than the mighty Douglass. He not only knew the peculiar institution's base inequality intimately but communicated more effectively than anyone else the horrors of how slavery continued to cast a pall over antebellum America.

Today's veneration of Douglass's speech is surely attributable to widespread esteem for the speaker himself. Although Douglass was a divisive figure in his own time, he has now, improbably, achieved universal acclaim in the 21st century—an age defined by notorious, deep-seated polarization. The political left has, of course, long championed Douglass, and Democratic elected officials—including President Barack Obama—continue to hail him.[8]

Perhaps more surprisingly, the modern Republican Party has also begun extolling Douglass. In a 2013 ceremony at the US Capitol honoring the installation of a new bronze statue of Douglass, members of the GOP's congressional delegation donned large buttons proclaiming "Frederick Douglass Was a Republican."[9] In February 2017, not long after entering the Oval Office, President Donald Trump affirmed Douglass's place in the American pantheon during a Black History Month speech:

> I am very proud now that we have a museum on the National Mall where people can learn about Reverend King, so many other things, Frederick Douglass is an example of somebody who's done an amazing job and is getting recognized more and more, I notice.[10]

Remarking in 2021 upon Douglass's ubiquitous political appeal, Kennedy astutely observed: "Now *everyone* wants a piece of Frederick Douglass."[11] (Emphasis added.)

This same phenomenon appears in the judicial sphere, as jurists of quite distinct stripes all assert that Douglass would have supported their positions. Most prominently, Justice Clarence Thomas cited and quoted Douglass in *Zelman v. Simmons-Harris*, *Grutter v. Bollinger*, and *McDonald v. City of Chicago*, three blockbuster decisions respectively centered on school vouchers, affirmative action, and gun rights.[12]

But more recently, the Supreme Court's liberals have also ushered Douglass to center stage. Perhaps in response to Thomas's conspicuous invocation in *Grutter*, in which he argued that Douglass would have detested affirmative action, Justice Ketanji Brown Jackson's and Justice Sonia Sotomayor's dissenting opinions in *Students for Fair Admissions v. Harvard* both invoked Douglass.[13] The person black Americans once routinely referred to as "the Great Frederick," Jackson and Sotomayor asserted, should actually be understood to support affirmative action.[14] There is perhaps no better testament to Douglass's central position in American intellectual culture than the fact that jurisprudentially and ideologically opposed

Supreme Court justices now feel compelled to wield dueling quotations regarding how that eminence would have viewed modern admissions policies in elite higher education.

Given Douglass's widespread appeal today, it is with considerable trepidation—indeed, a quailing sensation—that I now venture criticism of Douglass's "What to the Slave Is the Fourth of July?" oration. To avoid causing misunderstanding, let me be clear at the outset that I, too, worship at the altar of Saint Frederick. His astonishing life—which traversed the path from slavery to not just freedom but the very apex of American intellectual life—deserves the honored place it has attained. His writing and thinking profoundly improved our nation and the world.

Douglass's example also vitally improved my life. I grew up in Washington, DC, east of the Anacostia River, within shouting distance of the Great Frederick's estate. That home became the Frederick Douglass National Historic Site in 1988, when I was 12 years old. I was keenly aware at an early age that just down the road from my house, not even one century earlier, a person who began life enslaved (and therefore would have been expected to die illiterate) somehow managed to rise and become one of the signature figures of American letters.

When I first read the revealingly titled *Narrative of the Life of Frederick Douglass, an American Slave: Written by Himself*, the book captured my full attention, at once haunting and mesmerizing me in a way that no other book had. Douglass is thus one of my childhood heroes, one whom I have not outgrown in these past four decades, nor do I anticipate ever doing so. I hold him in such regard that even these days when I teach his writing to my constitutional law students at Yale, I sometimes make a point of referring to the work of *Justice* Douglass—an honorific I bestow on no other figure who did not actually occupy a seat on the Supreme Court. I therefore heartily endorse the view of Harvard Law School's Annette Gordon-Reed, who has argued that "by any measure, Douglass should be considered a Founder of the country."[15]

Nevertheless, no person—not even Douglass—stands above criticism. Some esteemed theorists have, understandably, invoked Douglass for the

proposition that the Fourth of July and black people go together like oil and water. For example, the philosopher Charles W. Mills has written that "Douglass saw, correctly, that July Fourth belonged to white Americans rather than to all Americans, and his anger at this appropriation continues to resound with us."[16] But as I argue in this chapter, such racialized understandings of who can legitimately lay claim to the Fourth of July are unduly constrained. The Fourth of July gave birth to the Declaration of Independence, and that document sparked more than the American Revolution against Britain. The Declaration's high-minded language has inspired many other revolts against oppression—including against white supremacy in the United States.

Douglass's famous Rochester oration thus would have been considerably improved had he lavished much greater attention on the Declaration's liberatory text and its larger meaning. That approach would have enabled him to emphasize the Declaration's resonant commitments to liberty and equality. Even if its signatories did not initially understand those commitments to include black Americans, abolitionists and proponents of racial equality nonetheless might extol the Declaration as inexorably, if inadvertently, paving the path toward racial liberation. On this account, the Fourth of July merited celebration—even in the grimmest days of slavery—because its soaring text ultimately facilitated the demise of that American atrocity. Black Americans have throughout American history rallied around the Declaration in their ongoing, never-ending efforts to perfect the American egalitarian project.

As we mark the document's semiquincentennial, it is essential to recall how the Declaration has often inspired courageous black Americans fighting for racial equality. In recovering several notable instances when black people have laid claim to the Declaration's emancipatory text, I hope to not only honor their efforts but insist further that the Fourth of July is mine—and ours.

A Document for White People?

Although the Declaration of Independence was recited in Corinthian Hall immediately before Douglass began his address, his remarks almost completely disregarded the Declaration's text. Instead, Douglass almost exclusively lambasted the nation's failure to ensure black people received the blessings of liberty. At the speech's outset, Douglass repeatedly and pointedly used the second person to address his overwhelmingly white audience about the Fourth of July's meaning.[17] "It is the birthday of *your* National Independence, and of *your* political freedom," Douglass contended.[18] "The freedom gained is *yours*; and *you*, therefore, may properly celebrate this anniversary. The 4th of July is the first great fact in *your* nation's history."[19] (Emphasis added.)

Douglass asserted that black people—particularly the enslaved—had scant occasion for celebrating the Declaration. Inviting a black person to commemorate the Fourth of July, Douglass insisted, amounted to sheer ridicule:

> Why am I called upon to speak here to-day? What have I, or those I represent, to do with your national independence? Are the great principles of political freedom and of natural justice, embodied in that Declaration of Independence, extended to us?[20]

Douglass made it clear that he believed Independence Day was a holiday exclusively for white people. "This Fourth of July is *yours*, not *mine*," he stated. "*You* may rejoice, *I* must mourn."[21] (Emphasis in original.) Douglass noted that, for the enslaved, Independence Day served as a source not of inspiration but rather of despair. Channeling "the slave's point of view," Douglass added: "Fellow-citizens, above your national, tumultuous joy, I hear the mournful wail of millions! whose chains, heavy and grievous yesterday, are, to-day, rendered more intolerable by the jubilee shouts that reach them."[22]

These remarks set the stage for Douglass's core claim, which provides the speech's modern handle and has now achieved a celebrated status:

> What, to the American slave, is your 4th of July? I answer; a day that reveals to him, more than all other days in the year, the gross injustice and cruelty to which he is the constant victim. To him, your celebration is a sham; your boasted liberty, an unholy license; your national greatness, swelling vanity; your sounds of rejoicing are empty and heartless; your denunciation of tyrants, brass fronted impudence; your shouts of liberty and equality, hollow mockery; your prayers and hymns, your sermons and thanksgivings, with all your religious parade and solemnity, are, to Him, mere bombast, fraud, deception, impiety, and hypocrisy—a thin veil to cover up crimes which would disgrace a nation of savages. There is not a nation on the earth guilty of practices more shocking and bloody than are the people of the United States, at this very hour.[23]

This searing denunciation of the United States informs a significant tradition in black political thought.[24] Reading these words today, it is striking how Douglass's remarks anticipate acerbic criticisms leveled by Marcus Garvey, Malcolm X, and—more recently—Rev. Jeremiah Wright, in his sermon that proclaimed not "God Bless America" but instead "God damn America."[25]

The foregoing excerpts are among the most familiar quotations from Douglass's speech. In recent years, a small number of observers—often in conservative outlets—have suggested that such excerpts provide a misleading, unduly jaundiced impression of Douglass's speech. These revisionists seize upon some of Douglass's statements to suggest that he held the nation's founding and founders in a far more flattering light than is generally understood. Revisionists further lament that Douglass's speech is typically excerpted, and the more overtly patriotic sentiments invariably end up on the cutting room floor.[26]

But these protestations should not carry the day. Apart from Abraham Lincoln's famously concise Gettysburg Address, virtually all well-known American speeches are reprinted in partial form rather than in their entirety. In the world of canonical oration, synecdoche is the rule rather than the exception. The common excerpts of Douglass's address, moreover, do not significantly distort his central message.

Instead, the revisionists alight upon what are in fact stray remarks provided in the course of a very long address to contend that Douglass advanced views of the United States that are more compatible with the revisionists' own. But in this instance, at least, the standard view of Douglass's address accurately conveys his dominant thrust. Legal scholars Jack Balkin and Sanford Levinson, who have played a key role in canonizing Douglass's work in constitutional circles, have accurately summed up the matter as follows: "One of Douglass's most famous speeches—on the Fourth of July—emphasized that the Declaration of Independence was only a declaration for white people."[27]

It is entirely commendable, of course, that Douglass faulted the United States for refusing to see how chattel slavery could not be tolerated in a society predicated on egalitarianism. In the 1850s, the persistent contradiction between America's original sin and its highest ideals deserved to be identified and rejected on every possible occasion. But it is also more than plausible to read the Declaration of Independence as paving the road to racial equality and the abolition of slavery. Even if Thomas Jefferson failed to carry the implication of his liberatory cry to its natural, emancipationist conclusion, supporters of racial equality could view—and, indeed, often have viewed—the Declaration as a tool of racial liberation.

On this account, when Douglass asked rhetorically in Corinthian Hall, "What have I, or those I represent, to do with your national independence?" a powerful response would have been: "*Everything*." Such a response would have proceeded to pay careful attention to the Declaration's text. Indeed, eight years after he spoke in Rochester, Douglass himself creatively and masterfully demonstrated how black Americans could

construe a different foundational American text—the US Constitution—as a document that promotes racial equality and slavery's abolition.

An Instrument of Liberation

In 1860, Douglass delivered a brilliant speech in Glasgow, Scotland, titled "The Constitution of the United States: Is It Pro-Slavery or Anti-Slavery?"[28] The Constitution at that time, of course, did not yet include the 13th, 14th, or 15th Amendments—known collectively as the Reconstruction Amendments. Therefore, the most straightforward reading of the pre–Civil War Constitution may well have deemed the document inexorably proslavery. In 1847, a young Douglass had condemned the Constitution in no uncertain terms, advancing the constitutional vision of doom associated with William Lloyd Garrison. "I have not, I cannot have, any love for this country, as such, or for its Constitution," Douglass said then. "I desire to see its overthrow as speedily as possible, and its Constitution shivered in a thousand fragments."[29]

Over time, however, Douglass changed his mind and firmly rejected Garrisonian anti-constitutionalism. In Glasgow, he boldly asserted that the Constitution, properly understood, should be viewed as resolutely antislavery. How did Douglass defend that arresting claim? His critical move elevated the Constitution's text to paramount importance and simultaneously made clear that any intentions the framers may have privately entertained but did not reduce to text were wholly irrelevant:

> The intentions of those who framed the Constitution . . . are to be respected so far, and so far only, as we find those intentions plainly stated in the Constitution. It would . . . lead to endless confusion and mischiefs, if, instead of looking to the written paper itself, for its meaning, it were attempted to make us search it out, in the secret motives . . . of some of the men who took part in writing it. It was what they said that was adopted

> by the people, not what they were ashamed or afraid to say, and really omitted to say.[30]

Today, of course, "textualism" and "originalism" are often used synonymously. But here Douglass can be viewed as pulling apart those two approaches, distinguishing textualism from original-intent originalism.[31] When text and original intent collide, Douglass argued, the Constitution's text must prevail.

Emphasizing constitutional text enabled Douglass to capitalize upon the fact that the Constitution's framers declined to use the word "slavery" or "slaves" throughout the entire document. That diffidence provided an opening, which Douglass proceeded to waltz right through. Douglass noted that the Constitution opens with the majestic words "We the People" and draws no distinctions among the people, racial or otherwise:

> Its language is 'we the people;' not we the white people, not even we the citizens, not we the privileged class, not we the high, not we the low, but we the people; . . . and, if Negroes are people, they are included in the benefits for which the Constitution of America was ordained and established.[32]

Those who believed that the Constitution protects slavery, Douglass contended, do so by smuggling in their own predilections that were not included in the instrument itself. "The American Constitution is pressed into the service of slavery," he stated, "by assuming that the Constitution does not mean what it says, and that it says what it does not mean; by disregarding the written Constitution, and interpreting it in the light of a secret understanding."[33] Rather than leading with constitutional text, Douglass wrote, wrongheaded interpreters of the document prioritized extratextual sources: "They go everywhere else for proof that the Constitution is pro-slavery but to the Constitution itself."[34]

With the textual foundation established, Douglass then advanced numerous arguments that particular constitutional provisions should

actually be viewed as militating against slavery. Consider here two of Douglass's ingenious arguments, which transform putatively proslavery constitutional text into antislavery provisions. First, Douglass focused on what is today known as the three-fifths compromise in Article I, Section 2, clause 3, which determined that a state's number of congressional representatives would be derived from its total population, including "three fifths of all other Persons" (i.e., slaves).[35] While this provision might be thought to countenance slavery, Douglass insisted that it actually undermined the peculiar institution.

> [The clause] is a downright disability laid upon the slaveholding States; one which deprives those States of two-fifths of their natural basis of representation. A black man in a free State is worth just two-fifths more than a black man in a slave State, as a basis of political power under the Constitution. Therefore, instead of encouraging slavery, the Constitution encourages freedom by giving an increase of 'two-fifths' of political power to free over slave States.[36]

Second, Douglass turned his attention to Article I, Section 8, clause 15, which empowered Congress to form militias "to . . . suppress Insurrections."[37] Although this constitutional provision was routinely called "the 'slave insurrection' clause," Douglass hastened to add that "in truth, there is no such clause."[38] But even if there were such a constitutional clause, he argued, its existence would nevertheless point in an antislavery direction. Douglass argued:

> If it should turn out that slavery is a source of insurrection, that there is no security from insurrection while slavery lasts, why, the Constitution would be best obeyed by putting an end to slavery, and an anti-slavery Congress would do that very thing.[39]

Well before the passage of the Reconstruction Amendments, Douglass thus vividly contended in Glasgow that the Constitution should be viewed as an instrument of liberation. In so doing, he provided an early, inspiring example of how even the most scorned, marginalized people in American history could nevertheless view one of the nation's foundational texts as advancing their egalitarian mission. Even if Douglass's constitutional readings would not win prizes for historical plausibility, the very fact that a formerly enslaved person eloquently cast his lot with the Constitution helped make a vision that could have been dismissed as a mere provocation into reality. If Douglass's transgressive textual readings could effectively embrace the Constitution as an antislavery document, that approach surely could have also reaped fruit with the Declaration of Independence.

Douglass's Declaration—and Ours

Employing the textual techniques that Douglass displayed in Glasgow regarding the Constitution reveals, not surprisingly, that the Declaration of Independence can readily be interpreted as an antislavery document. In my view, Douglass's Rochester address would have been significantly improved if he had expended greater intellectual energy parsing the Declaration's liberatory text. That opportunity was teed up nicely by Reverend Raymond's delivery of the Declaration immediately before Douglass spoke, but Douglass, alas, declined to avail himself of that compelling approach. Allow me here to pay homage to Douglass's constitutional textualism by briefly sketching how that methodology could have enabled him explicitly to claim the Declaration for himself—and his people.

Douglass could have, of course, started at the beginning. In 13 of the most famous words ever strung together, the Declaration asserted: "We hold these truths to be self-evident, that all men are created equal." In the spirit of Douglass's racially inclusive reading of the Constitution's

preamble, one can easily imagine him insisting that the Declaration's most resonant language also did not draw racial lines.

The Declaration did not instruct that "all *white* men are created equal" but instead embraced a vision of egalitarianism that did not acknowledge racial boundaries. It did not say, moreover, that only "citizens" were created equal. Instead, the Declaration's notion of equality applied to all mankind, slaves included. Even if this notion were not "self-evident," as the Declaration itself insisted, recall that the Constitution—including in the three-fifths clause—repeatedly refers to the enslaved as "persons."[40] If that is not an acknowledgment of black humanity, then what is?

Textual support for the Declaration's antislavery reading would continue by considering the language that held among the God-given inalienable rights that mankind possesses "Life, Liberty and the pursuit of Happiness." But, of course, bondage quite literally prohibits slaves from realizing either their liberty or the ability to pursue happiness. Slavery's heavy chains render it impossible for those in its confines to move about the nation freely in the pursuit of joy, flourishing, or anything else, for that matter. To the contrary, one of slavery's foremost atrocities was the institution's blatant disregard for familial liberty and happiness, as it routinely licensed children being separated from their mothers and fathers at their enslavers' whims.

A text-driven understanding of the Declaration as an abolitionist document would emphasize that its dominant through lines sound in anti-despotic and anti-tyrannical motivations. While the Declaration casts King George III in the role of despot and tyrant, the larger principles that it embraces can also be viewed as rebuking the mini-despots and the mini-tyrants who ruled American plantations. The Declaration employs antiauthoritarian rhetoric in at least two critical instances. First, it states that "when a long train of abuses and usurpations . . . evinces a design to reduce [the people] under absolute despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security." One can easily imagine Douglass saying that the American slave knew more than a little something about the sorts of "abuses and usurpations" that yield

"absolute despotism" and that adhering to the Declaration therefore demanded revolting against the slavocracy under which they toiled.

Second, as the Declaration shifts from abstract principles to concrete details, it notes: "The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny." Douglass might argue that at least as much as the Declaration's signatories, the enslaved—including himself—knew very well that slavery's brutality and barbarity visited countless "injuries" and subjected those held in its clutches to "absolute Tyranny." While the signatories may have intended primarily to throw off the yoke of King George III's tyranny, Douglass might have argued that we should nonetheless honor their broader, stated ambitions to oppose the tyrant and the despot, in his many guises, who ruled on American soil.

Several items on the Declaration's bill of grievances against King George III also might be understood to apply with significant force against slaveholders. Consider three of those grievances and their underlying principles. The Declaration laments that King George III "has excited domestic insurrections amongst us." But as Douglass argued regarding the Constitution's "'slave insurrection' clause," the fact that many understood slavery's potential for fomenting domestic unrest suggests that the Declaration's anti-insurrection principle was in effect an antislavery provision.

In addition, the Declaration censured King George III for "plunder[ing] our seas, ravag[ing] our Coasts, burn[ing] our towns, and destroy[ing] the lives of our people." Although this grievance was aimed at Lord Dunmore's egregious behavior as royal governor of Virginia, Douglass could have seized upon it to argue not only against the transatlantic slave trade's rapacious treatment of innumerable African communities but also against the way slavery destroyed untold lives of people of African descent in America.

Finally, and most adventurously, Douglass could have noted that the Declaration condemned King George III "for Quartering large bodies of armed troops among us." Here, Jefferson was directing his particular ire at Parliament's 1765 Quartering Act, which entitled British soldiers to

shelter in the American colonies. This grievance, of course, inspired the Constitution's Third Amendment, which provides that "no Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law."[41] Given that the Supreme Court has recognized a right to privacy in no small part derived from the Third Amendment's prohibition on quartering soldiers, it would be possible to argue that the Declaration also recognized a proto-right to privacy.[42] And because the slaves' right to privacy was notable exclusively for its absence—in their inability to control who entered their most intimate quarters—the Declaration should along this dimension also be viewed as assuming an abolitionist character.

But even had Douglass laid extensive claim to the Declaration's liberatory promise in Corinthian Hall long ago, that would hardly have been a novel development in black American political thought. Instead, black people extolling the Declaration of Independence and its ideals is, with apologies to H. Rap Brown, as American as cherry pie.[43]

The Emancipatory Declaration

Celebrated black Americans have long laid claim to the Declaration of Independence, citing it as a vital source of inspiration in the struggles for racial equality and beyond. For example, in 1944, Howard University historian Rayford Logan published a remarkable collection of essays written by the era's preeminent black leaders and intellectuals in a volume titled simply *What the Negro Wants*. Mary McLeod Bethune, founder of the National Council of Negro Women, opened her contribution, on "Certain Unalienable Rights," with an extended analogy connecting the grievances motivating the Boston Tea Party in 1773 to the discontent swirling throughout urban black America in the 1940s.

Tyranny, Bethune insisted, arrives in different forms—including in the violence that white police officers too often visited upon black Americans. The urban unrest gripping Detroit and Los Angeles in the 1940s should be

viewed as efforts to "achieve the ideals 'that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness,'" Bethune contended.[44] "Just as the Colonists at the Boston Tea Party wanted 'out' from under tyranny and oppression and taxation without representation . . . colored Americans want 'out.'"[45]

Bethune suggested that in the same manner as they looked to the American Revolution in their pursuit of racial equality on the domestic front, black Americans looked to the American Revolution as driving their fight against tyranny during World War II on the international front. She argued:

> All true Americans should not be surprised by this logical climax of American education. For several generations colored Americans have been brought up on the Boston Tea Party and the Declaration of Independence; on the principle of equality of opportunity, the possession of inalienable rights, the integrity and sanctity of the human personality. Along with other good Americans the Negro has been prepared to take his part in the fight against an enemy that threatens all these basic American principles.[46]

Bethune contended, in essence, that though black people wanted *out* of racial oppression, they also wanted *in* on the fight against fascism.

As editor of *The Crisis*, the NAACP's official organ, Roy Wilkins struck similar themes in his contribution to *What the Negro Wants*. "The Negro is here," Wilkins wrote. "He is thoroughly American. He thinks and lives in the American tradition. He learns from American text books about the Revolutionary war, about independence, the spirit of America—and equality."[47]

Wilkins's invocation of the American Revolution was hardly an isolated incident. In 1955, just after he ascended to become the NAACP's executive secretary, Wilkins suggested that ardent segregationists were destined

to fail just as other seemingly implacable foes had failed throughout history—including during the 1770s. Defenders of Jim Crow, Wilkins argued, "say 'never' like the Romans before the coming of Christ; like King John before Magna Charta . . . like George III of England before the Declaration of Independence."[48]

In perhaps the Declaration's most celebrated invocation during the past century, Rev. Martin Luther King Jr. dedicated a key passage of the "I Have a Dream" speech in 1963 to contending that the civil rights movement carried on the American Revolution's central promise. In his inimitable tones, King asserted:

> When the architects of our republic wrote the magnificent words of the Constitution and the Declaration of Independence, they were signing a promissory note to which every American was to fall heir. This note was a promise that all men, yes, black men as well as white men, would be guaranteed the "unalienable Rights of Life, Liberty, and the pursuit of Happiness." . . .
>
> . . . So even though we face the difficulties of today and tomorrow, I still have a dream. It is a dream deeply rooted in the American dream.
>
> I have a dream that one day this nation will rise up and live out the true meaning of its creed: "We hold these truths to be self-evident, that all men are created equal."[49]

During the classical phase of the civil rights movement, King was far from alone in portraying its mission not as a castigation of American ideals but instead as a consecration of those ideals.

President Barack Obama, an attentive student of the civil rights movement, has repeatedly invoked the Declaration as a source of inspiration. For instance, toward the conclusion of his memoir *Dreams from My Father*, Obama acknowledged that legal study can sometimes seem abstract, mundane, and technocratic. "But that's not all the law is," he continued.[50] Obama then proceeded to connect the Declaration not only to Douglass

but also to the modern march toward racial equality. "The law is also memory; the law also records a long-running conversation, a nation arguing with its conscience," he wrote. "*We hold these truths to be self-evident.* In those words, I hear the spirit of Douglass and Delany, as well as Jefferson and Lincoln; the struggles of Martin and Malcolm and unheralded marchers to bring these words to life."[51] (Emphasis in original.)

In his political debut on the national stage at the Democratic Party's convention in 2004, moreover, Obama memorably tied his own meteoric rise to the fulfillment of America's founding ideals. "I stand here knowing that my story is part of the larger American story, that I owe a debt to all of those who came before me, and that in no other country on Earth is my story even possible," he said.[52] American pride, Obama continued, derived not from our military might nor even our economic power:

> Our pride is based on a very simple premise, summed up in a declaration made over two hundred years ago: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable rights."[53]

When he delivered those words in 2004, Obama had recently secured Illinois's Democratic nomination for the US Senate. But those inspiring, patriotic remarks played a major role in propelling him into the White House only four years later.

It may be tempting to believe that black people claiming the Declaration as a liberatory text became possible only in the mid-20th century. On this account, criticizing Douglass for failing to make full use of the Declaration's textual promise in the 1850s—well before the abolition of slavery—would hold him to an impossible, ahistorical standard. Such objections, however, miss the mark.

Some black people claimed the Declaration as an emancipatory document as early as 1777—less than six months after John Hancock affixed his signature to the document. As Harvard University's Danielle Allen has highlighted, a free black man in Massachusetts named Prince Hall

became "the first American to publicly use the language of the Declaration of Independence for a political purpose other than justifying war against Britain."[54] In a document filed with the Massachusetts legislature, Hall—joined by several fellow free black men—contended that the Declaration's language required abolishing race-based slavery in America.[55] Hall's call for slavery's abolition included repeated echoes of the Declaration, echoes which are (per Allen) italicized in the following excerpt:

> The petition of A Great Number of Blackes detained in a State of Slavery in the Bowels of a free & christian Country Humbly shuwith that your Petitioners Apprehend that Thay have in Common with all other men a *Natural and Unaliable Right to that freedom which the Grat—Parent of the Unavese hath Bestowed equalley on all menkind* and which they have Never forfuted by Any Compact or Agreement whatever—but thay wher Unjustly Dragged by the hand of cruel Power from their Derest frinds and sum of them Even torn from the Embraces of their tender Parents—from A popolous Plasant And plentiful cuntry And in Violation of *Laws of Nature and off Nations* And in defiance of all the tender feelings of humanity Brough hear Either to Be sold Like Beast of Burthen & Like them Condemnd to Slavery for Life.[56]

Hall's liberatory reading of the Declaration can thus be understood as anticipating Reverend King's peroration by a little less than two centuries.

Even Douglass himself ultimately understood the value that could flow from firmly, explicitly embracing the Fourth of July, portraying himself and black people generally not as somehow outside of founding American principles but instead as their rightful claimants. In 1862, a decade after his Rochester address, he delivered another, quite distinct Fourth of July address in a New York hamlet called Himrod Corners. Whereas Douglass's Rochester address is known the world over, the Himrod Corners speech has been all but forgotten.

The relatively small imprint of this speech is regrettable because it not only marks a critical inflection point in Douglass's thought but also makes for a fascinating juxtaposition with the Rochester oration. As Blight has emphasized, in the Himrod Corners address, Douglass—for the first time—referred to America's founding generation with not only the distancing second-person "your fathers" but also the intimate, first-person "our fathers."[57] Seldom in the history of American literature has the subtraction of a single letter made a more profound difference.

Instead of excoriating white Americans for failing to honor fully the Declaration's promise of liberty, Douglass encouraged them to make that promise real. "The claims of our fathers upon our memory, admiration and gratitude, are founded in the fact that they wisely, and bravely, and successfully met the crisis of their day," he stated. "And if the men of this generation would deserve well of posterity they must like their fathers, discharge the duties and responsibilities of their age."[58]

The deep problems confronting the United States in the 1860s, Douglass urged, could be remedied by returning to the high ideals articulated by the original founding generation. In this sense, he contended that the Civil War should be regarded as but an extension of the Revolutionary War. Just as the original founding generation "drew the sword for free and independent Government, Republican in its form, Democratic in its spirit," Douglass observed,

> the war of to-day on the part of the loyal north, the east and the west, is waged for the same grand and all commanding objects. We are only continuing the tremendous struggle, which your fathers, and my fathers began eighty-six years ago.[59]

Now, 163 years after Douglass made his pivotal turn, theorists in certain quarters doubt the wisdom of embracing America's governmental and intellectual foundations. While Douglass's posture in 1852 may be deeply fashionable today, we should not lose sight of the fact that his approach in 1862 is for the ages. Indeed, if Douglass, Bethune, Wilkins, King, and Hall

all found inspiration in the Declaration of Independence as they waged their battles for racial justice, who are we now to abandon that honorable tradition?

Notes

1. Frederick Douglass, "The Meaning of July Fourth for the Negro," speech, Rochester, NY, July 5, 1852, in *Frederick Douglass: Selected Speeches and Writings*, ed. Philip S. Foner (Lawrence Hill Books, 1999), 188. These opening paragraphs are drawn from a wide array of sources. See David W. Blight, *Frederick Douglass: Prophet of Freedom* (Simon & Schuster, 2018), 59–67, 134, 229–36; William S. McFeely, *Frederick Douglass* (W. W. Norton & Company, 1991), 44–48, 108–12, 172–73; James A. Colaiaco, *Frederick Douglass and the Fourth of July* (Palgrave Macmillan, 2006), 1–2, 7–8, 12, 23–24, 119–21; Brent Staples, "Frederick the Great," *The New York Times Book Review*, November 11, 2018; and David Levering Lewis, "The Great Frederick," *The New York Times*, February 17, 1991, https://www.nytimes.com/1991/02/17/books/the-great-frederick.html.

2. Blight, *Frederick Douglass*, 236.

3. See Andrew S. Bibby, "What to the Slave Is the Fourth of July?," *The Wall Street Journal*, July 2, 2014, https://www.wsj.com/articles/andrew-bibby-what-to-the-slave-is-the-fourth-of-july-1404342530.

4. Randall Kennedy, *Say It Loud! On Race, Law, History, and Culture* (Pantheon, 2021), 233.

5. McFeely, *Frederick Douglass*, 173.

6. Blight, *Frederick Douglass*, 230.

7. Blight, *Frederick Douglass*, 236.

8. Kennedy, *Say It Loud!*, 234.

9. Kennedy, *Say It Loud!* See also David W. Blight, "How the Right Co-Opts Frederick Douglass," *The New York Times*, February 13, 2018, https://www.nytimes.com/2018/02/13/opinion/right-coopts-frederick-douglass.html.

10. David A. Graham, "Donald Trump's Narrative of the Life of Frederick Douglass," *The Atlantic*, February 1, 2017, https://www.theatlantic.com/politics/archive/2017/02/frederick-douglass-trump/515292/.

11. Kennedy, *Say It Loud!*

12. Zelman v. Simmons-Harris, 536 US 639, 676, 684 (2002); Grutter v. Bollinger, 539 US 306, 349–50, 378 (2003); and McDonald v. City of Chicago, 561 US 742, 849–50 (2010).

13. Students for Fair Admissions v. Harvard, 600 US 181, 320, 386, 393 (2023).

14. "Black people called him the Great Frederick." Lewis, "The Great Frederick."

15. Annette Gordon-Reed, "Comment on *Frederick Douglass and the Two Constitutions: Proslavery and Antislavery*," *California Law Review* 111 (December 2023): 1909, 1913,

https://www.californialawreview.org/print/comment-on-frederick-douglass-and-the-two-constitutions-proslavery-and-antislavery.

16. Charles W. Mills, *Blackness Visible: Essays on Philosophy and Race* (Cornell University Press, 1998), 200.

17. Blight's biography effectively emphasizes this point. Blight, *Frederick Douglass*, 232.

18. Douglass, "The Meaning of July Fourth for the Negro," 189.

19. Douglass, "The Meaning of July Fourth for the Negro," 191.

20. Douglass, "The Meaning of July Fourth for the Negro," 194.

21. Douglass, "The Meaning of July Fourth for the Negro."

22. Douglass, "The Meaning of July Fourth for the Negro," 194–95.

23. Douglass, "The Meaning of July Fourth for the Negro," 196–97.

24. Kennedy, *Say It Loud!*, 235–37.

25. See ABC News, "Obama's Pastor: God Damn America, U.S. to Blame for 9/11," March 13, 2008, https://abcnews.go.com/Blotter/DemocraticDebate/story?id=4443788.

26. For examples of the revisionist approach, see Diana Schaub, "Frederick Douglass: The Constitution Militant," *The Georgetown Journal of Law & Public Policy* 22, no. 1 (2024): 137, 140, https://www.law.georgetown.edu/public-policy-journal/wp-content/uploads/sites/23/2024/06/GT-GLPP240006.pdf; Bibby, "What to the Slave Is the Fourth of July?"; and Stephen Sachs, "Good and Evil in the American Founding: The 2023 Vaughan Lecture on America's Founding Principles," *Harvard Journal of Law and Public Policy* 48, no. 1 (2025): 283, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4843831.

27. Jack M. Balkin and Sanford Levinson, "Frederick Douglass as Constitutionalist," *Maryland Law Review* 83, no. 1 (2023): 260, 279, https://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=3984&context=mlr. "We gladly affirm that Douglass's Glasgow Address deserves a place in the canons of constitutional pedagogy." J. M. Balkin and Sanford Levinson, "The Canons of Constitutional Law," *Harvard Law Review* 111, no. 4 (1998): 1019, https://openyls.law.yale.edu/bitstream/handle/20.500.13051/1931/The_Canons_of_Constitutional_Law.pdf. For excerpts and a discussion of Douglass's Glasgow speech, see Sanford Levinson et al., *Processes of Constitutional Decisionmaking: Cases and Materials,* 8th ed. (Aspen Publishing, 2022), 292–97.

28. Frederick Douglass, "The Constitution of the United States: Is It Pro-Slavery or Antislavery?," speech, Glasgow, Scotland, March 26, 1860, in Foner, ed., *Frederick Douglass*, 380–89.

29. Frederick Douglass, "The Right to Criticize American Institutions," speech, American Anti-Slavery Society, May 11, 1847, in Foner, ed., *Frederick Douglass,* 77–78.

30. Douglass, "The Constitution of the United States," 381.

31. Most originalists today, of course, march behind the banner not of "original intent" but instead of "original public meaning." Douglass's move here bears a strong similarity to the move that Justice Antonin Scalia made regarding originalism in the 1980s. For a note explaining that Scalia re-centered originalism's focus, moving the

search from "original intent" to "original meaning," see Justin Driver, "Divine Justice," *The New Republic*, September 29, 2014, 40–42.

32. Douglass, "The Constitution of the United States," 387.
33. Douglass, "The Constitution of the United States," 388.
34. Douglass, "The Constitution of the United States."
35. US Const. art. I, § 2, cl. 3.
36. Douglass, "The Constitution of the United States," 384.
37. US Const. art. I, § 8, cl. 15.
38. Douglass, "The Constitution of the United States," 384.
39. Douglass, "The Constitution of the United States," 385.
40. See US Const. art. I, § 2, cl. 3; and US Const. art. I, § 9, cl. 1.
41. US Const. amend. III.
42. For grounding the right to privacy in the Third Amendment, see Griswold v. Connecticut, 381 US 479, 484 (1965).
43. For quoting H. Rap Brown's statement that "violence is as American as cherry pie," see John Herbers, "Violence; It Is as American as Cherry Pie," *The New York Times*, June 8, 1969, https://www.nytimes.com/1969/06/08/archives/violence-it-is-as-american-as-cherry-pie.html. I will leave it to others to parse whether apple pie is the more prototypically American dessert.
44. Mary McLeod Bethune, "Certain Unalienable Rights," in Rayford Logan, ed., *What the Negro Wants* (University of North Carolina Press, 1944), 248, 249.
45. Bethune, "Certain Unalienable Rights," 249–50.
46. Bethune, "Certain Unalienable Rights," 250.
47. Roy Wilkins, "The Negro Wants Full Equality," in Logan, *What the Negro Wants*, 113, 130.
48. Roy Wilkins, "The Conspiracy to Deny Equality," in *The Voice of Black America: Major Speeches by Negroes in the United States 1797–1973*, ed. Philip S. Foner (Simon & Schuster, 1972).
49. Martin Luther King Jr., "I Have a Dream," speech, Washington, DC, August 28, 1963, in *A Call to Conscience: The Landmark Speeches of Dr. Martin Luther King, Jr.*, ed. Clayborne Carson and Kris Shepard (Grand Central Publishing, 2001), 81, 82, 85. (Audience responses cleaned up.)
50. Barack Obama, *Dreams from My Father: A Story of Race and Inheritance* (Times Books, 1995), 437.
51. Obama, *Dreams from My Father*, 437.
52. Barack Obama, "The Audacity of Hope," speech, 2004 Democratic National Convention, Boston, July 27, 2004, in *We Are the Change We Seek: The Speeches of Barack Obama*, ed. E. J. Dionne Jr. and Joy-Ann Reid (Bloomsbury, 2017), 5, 7.
53. Obama, "The Audacity of Hope," 7.
54. Danielle Allen, "A Forgotten Black Founding Father," *The Atlantic*, March 2021, 42, 44, https://www.theatlantic.com/magazine/archive/2021/03/prince-hall-forgotten-founder/617791/.
55. Allen, "A Forgotten Black Founding Father," 44.

56. Allen, "A Forgotten Black Founding Father."

57. Blight, *Frederick Douglass*, 368.

58. Douglass, "The Slaveholders' Rebellion," speech, Himrods Corners, Yates County, NY, July 4, 1862, in Foner, ed., *Frederick Douglass*, 495, 496.

59. Douglass, "The Slaveholders' Rebellion," 495, 496.