Colonial South Carolina's influence on the American constitution

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ABSTRACT

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TIDWELL, WYLIE JASON DONTE' B.A. SAN FRANCISCO STATE UNIVERSITY, 2006

COLONIAL SOUTH CAROLINA’S INFLUENCE ON THE AMERICAN CONSTITUTION

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This research examines whether or not the colonial statutes of South Carolina, created between 1600 and 1787, helped to shape the American Constitution regarding race and the institution of slavery. The research suggests that South Carolina’s persistence and insistence that the institution of racial slavery be protected by the Constitution was a major influence on the perception of slavery by its framers. The Constitution was the document that ultimately encompassed most of the political thoughts and issues found in colonial America.

This research was based on the premise that the field of Black Studies was in need of an analysis and comparison of the similarities between the racism that existed in colonial America and racism after the adoption of the American Constitution and its amendments.
The researcher found that South Carolina's diligence and insistence during the Constitutional Convention of 1787, that racial slavery be protected by the Constitution, was the major influence on how the American Constitution would be worded, in reference to slavery as a means of representation and possible economical gains.

The conclusions drawn from the findings suggest that, the American Constitution emerged as an inherently racist document supporting slavery as a means of furthering American economic needs. The colonists in all the British colonies (South Carolina included) passed a series of laws that helped maintain the structure of slavery and gave them control over their slave labor. However, colonial South Carolina statutes, more than other colonies, were developed to maintain slavery. These statutes were later supported by the American legal system.
COLONIAL SOUTH CAROLINAS’S INFLUENCE ON THE AMERICAN CONSTITUTION

A THESIS
SUBMITTED TO THE FACULTY OF CLARK ATLANTA UNIVERSITY
IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR
THE DEGREE OF MASTER OF ARTS

BY
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DEPARTMENT OF AFRICAN AMERICAN STUDIES

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MAY 2010
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CHAPTER I
INTRODUCTION

The purpose of this research was to investigate three central themes: 1) whether or not the colonial statutes of South Carolina, created between 1600 and 1787, helped to shape the American Constitution regarding race and the institution of slavery; 2) the impact of the delegates on the Constitutional Convention of 1787 in ensuring Southern interests in protecting racial slavery for economic gains; and 3) the impacts of compromises during the summer of 1787 in making the U.S. Constitution a racist document based on servitude of a particular race based on skin color for the overall economic success of the United States. This particular research did not focus on the impact of the Constitution upon Native Americans and indentured servants, but rather the African slaves who comprised the largest labor force in colonial South Carolina. In an effort to control the slave labor force, the British colonies passed a series of laws that helped strengthen the system of slavery. More than any other colony, South Carolina was relied upon slavery for its economic gains. Colonial South Carolina’s statutes appear to have had the most influence, in comparison to the other 12 colonies, on the development of the American Constitution, thereby allowing slavery to continue well after the 1787 Constitutional Convention.

The Trans-Atlantic slave trade was the key to the economic future of the
participating European colonies. South Carolina was one of the original colonies of Britain and enjoyed the most success because of the institution of slavery. After America declared its independence from Britain in 1776, South Carolina became the driving force behind America’s adoption of a Constitution that maintained racial slavery throughout the North and South. The establishment of a new central government in 1787 was important to the Southern Colonies in order to protect the Southern institution of slavery.

When Africans were traded for British goods, they were transported to plantations in the West Indies and some areas of the southern North American mainland. The enslaved Africans worked on plantations that produced goods such as sugar, cotton, rice, and molasses. Not until the latter half of the seventeenth century was racial slavery evident in the American colonies. Prior to this, indentured servants were Blacks, Whites, and Native Americans. There were white workers in colonial America, but there was a dramatic difference between them and the African slaves. W.E.B. Du Bois says of white laborers, “... while they received a low wage, [they] were compensated in part by a sort of public and psychological wage. They were given public deference and titles of courtesy because they were white.”¹ Blacks were viewed as a servile labor group for approximately the first 300 years on the North American continent.

Hence, there were many justifications, including religious and scientific, for racially based slavery. Paul Finkleman stated that slavery was a central institution in many successful nations such as Greece and Rome. The success of these nations was due, in part, to the institution of slavery, which allowed their leaders to focus on the affairs of

the society instead of engaging in manual labor. Therefore, Southerners asserted that slavery was a perquisite to the ruling elite within a democratic society.\(^2\) However, the two arguments that resonated with most Northerners and allowed slavery to continue until the Civil War were “rooted in political and constitutional theory.”\(^3\)

The political and constitutional argument was that under federalism, created by the American Constitution, the slave states had the right to create and regulate their own institutions. Furthermore, the legislative branch (Congress) had no power to interfere with any state that chose to legalize slavery. Many northern politicians, even those whom opposed slavery, accepted this argument as the rationale for South Carolina’s influence in the development of the American Constitution. This action allowed for the emergence of systemic racism as the foundation of a developing American society. Sociologist Joe Feagin defines systemic racism as,

\textit{The complex array of anti-black practices, the unjustly gained political-economic power of whites, the continuing economic and other resource inequalities along racial lines, and the white racist ideologies and attitudes created to maintain and rationalize white privilege and power. Systemic here means that the core racist realities are manifested in each of society’s major parts \ldots the economy, politics, education, religion, the family \ldots reflects the fundamental reality of systemic racism.}\(^4\)

For Southerners the argument based on race suggested that those of African ancestry were biologically inferior, which “relegated them to permanently diminished status.”\(^5\) These arguments, along with the historical events, were shared by many of the colonists, in both the North and South, which eventually led to numerous compromises


\(^3\) Ibid., 5.


\(^5\) Ibid.
during the Constitutional Convention of 1787. The Southern attitudes toward race, including acts of systemic racism, grew out of the history of Britain and its ideology of economic gains, which is evident in America's adoption of a capitalist economic system.

        Furthermore, the Europeans who first settled on the West Indian island of Barbados were the original immigrants who populated the land that eventually became the colony of South Carolina. Initially, South Carolina and North Carolina were one colony. However, due to the influence from the northern colony of Virginia the colony separated into north and south. North Carolina took on many of the characteristics of Virginia while South Carolina took on the traits of the Island of Barbados. In the early settlements of Barbados, African slaves were not numerous, but with the introduction of sugar as a staple crop of the island this quickly changed. During the 1660s and 1670s, the island suffered crop failures and natural disasters (e.g., fires and tropical storms), which forced some of the English inhabitants to look for new land or to return to England. The fraction that migrated to the North American mainland, Carolina to be exact, grew after 1670. For the Carolina proprietors in London, European immigrants "could provide seasoned settlers from a short distance at a minimal cost. With sugar production intensifying and slave imports increasing, the white population had begun to decline in relative and absolute terms, and emigration was already common."  

        Thus, the West Indies played a very important role in the slave trade, because this was the region of the world where slaves were "seasoned" to become good laborers. During this process, attempts were made to strip the slaves of everything they knew,


        7 Ibid., 15
which included religion, culture, language, and individuality. Many of the European immigrants to the colony of South Carolina understood the importance of this process, especially as a way to break communication between slaves from the same regions in Africa. This process was used as a means to control slave laborers and to guarantee their subordination for centuries to come. Due to South Carolina’s topography, the climate varied from the grasslands of the Appalachian mountain ranges to the west and the tropical swamplands to the east. The climate found in the eastern areas allowed the colony to become a large producer of rice, which was a very labor-intensive crop and required large numbers of laborers to produce. As a result, there was a large migration of African slaves into the colony, who underwent a seasoning process similar to that used in the West Indies.

Moreover, many historians have asserted that racial slavery most likely existed very early in the development of the colony of South Carolina. In fact, “South Carolina, even while still part of the original colony of Carolina, started with a relatively definitive legal structure on slavery in a fierce determination to use slavery wherever it was profitable.”

Therefore, the institution of slavery, unlike any other American institutions, was heavily influenced by racist attitudes coming from European West Indian immigrants.

Subsequently, by the year 1708, the colony of South Carolina had the largest population of slaves in all the American colonies. This created a mentality of control and containment of its enslaved labor force by the South Carolina landowners. With the introduction of rice in the 1690s as the new staple crop of the colony, South Carolina

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8 Leon A. Higginbotham, Jr., In The Matter Of Color (New York: Oxford University, 1978), 152.
became a prevailing power in the lower South. Rice was so popular that “exports soared from 12,000 pounds in 1698 to 18 million pounds in 1730 and 83 million in 1770.” This rise in production coincided with the rise in slave labor, which then had to be monitored through the law. In response, South Carolina passed a series of slave laws designed to control its slave labor force.

Because of the rise in production and slave labor, South Carolina had attempted to pass its first slave code in 1690, but the Proprietors disallowed it. In 1712, South Carolina passed its first comprehensive slave code, which became the basis for similar legislation that supported slavery throughout the Southern colonies. Historian Kenneth Stampp states that the development of slave mentalities could be related to very specific elements of control. These elements included: 1) the establishment of strict policies to discipline captive Africans and cause fear, 2) a sense of personal inferiority, 3) the slaves’ willingness to accept the slaveholder’s standards of conduct as their own, and lastly, 4) the development of dependence on those who claimed to be their masters. Thus, South Carolina’s unmatched economic influence, resulting from years of forced slavery of Africans, allowed her to “strong-arm” provisions into the U.S. Constitution that protected her economic interest and inscribed racist attitudes into the Constitution that still persist today.

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12 Ibid., 105-6.
Significance of the Study

This study enhances the field of Black Studies in the analysis and comparison of the similarities between the racism that existed in colonial America and racism after the adoption of the American Constitution and its amendments. The research suggests that South Carolina's persistence and insistence that the institution of racial slavery be protected by the Constitution was a major influence on the perception of slavery by its framers. The Constitution was the document that ultimately encompassed most of the political thoughts and issues found in colonial America.

Studying the impact of South Carolina's statutes on the development of the American Constitution adds to the scholarship of Black Studies as well as American History through aiding in understanding the underdevelopment of black America moving into the 21st century. Today many Americans believe that the U.S. Constitution is a colorblind document created with equality and a democratic legal framework in mind. In the nineteenth century, historian George Bancroft shared his view of the Constitution when he states,

The Constitution establishes nothing that interferes with equality and individuality. It knows nothing of differences by descent, or opinions, of favored lasses, or legalized religion, or the political power of property. It leaves the individual alongside of the individual...American society is composed of separate, free, and constantly moving atoms, ever in reciprocal action...so that the institutions and laws of the country rise out of the masses of individual through which, like the waters of the ocean, are rolling evermore.13

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Bancroft explains that the document was not written to secure rights but rather to secure individuality and to ensure those who are strong enough to survive will prosper. The Constitution did not take into account the majority of the population: slaves, women, Native Americans, and indentured servants. Their concerns were not reflected in the Constitution, thereby creating a backdrop for how these segments of the population would be viewed.

In his book, *An Economic Interpretation of the Constitution*, historian Charles Beard suggests another interpretation. He suggests that the Constitution was written with particular goals in mind. Beard states,

> Inasmuch as the primary object of a government, beyond the mere repression of physical violence, is the making of the rules which determine the property relations of members of society, the dominant classes whose rights are thus to be determined must perforce obtain from the government such rules as are consonant with the larger interests necessary to the continuance of their economic processes, or they must themselves control the organs of government.  

Beard advocates the idea that the Constitution was written for the framers and those they represented. Thomas Jefferson owned slaves, as did James Madison and George Washington. Benjamin Franklin was known to have a fortune (around $150,000) and Alexander Hamilton had many wealthy friends and supporters whom he had to protect as well. These arrangements of wealth and slave ownership indicate that the Constitution was not developed to benefit the average American, black or white, but it was written instead to maintain a particular standard of living for the dominant class.

Mark Christian states, "The fact remains that the average Black Studies scholar today functions in a Eurocentric-led educational environment, which often to a conscious

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14 Ibid.
or unconscious dislocation in terms of one's scholarly endeavors."¹⁵ Thus, this research is not a separatist approach, but rather an effort to expand American History and the interpretation of the Constitution from an African-centered perspective, because at the center of the research are those citizens of African descent living in what is now known as the United States of America. Analyzing colonial South Carolina's comprehensive slave codes and the role that the delegates from this colony had on the structure of the U.S. Constitution helps to explain the role of federal laws in struggles of the African Americans past and present. This research examines the influence of colonial South Carolina's comprehensive codes from 1600 through 1787, race relations in South Carolina that helped create the slave codes, and how these issues were then reflected in the U.S. Constitution.

Conceptual Framework

Asante's Location Theory takes into consideration three things: language, attitude, and direction. Language is important because "it most easily manifests its author's conceptual incarceration or conceptual liberation."¹⁶ Attitude displays the original writer's perspective, while direction relates to the author's visions. As these factors are equally important and dependent upon each other, they must be taken into consideration when analyzing the development of the American Constitution. Although there is no specific reference to slavery, it is implied throughout the document. The racially charged environment towards blacks during the late 1700s was displayed in the

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attitudes of the delegates at the convention, which allowed them to agree on the issue regardless of who owned slaves. Both North and South understood that if the country were headed toward complete independence, slavery would be the system to bring economic stability.

Location is critical to the study of the American Constitution because delegates represented two very different areas. This suggests that the element of place is more than just text, but also geographical regions. The Northern colonies were more industrialized than their neighbors to the South were. Many of the Northern colonies, such as New York, ended slavery before the Convention in 1785. Many Northerners, especially politicians, believed slavery was a Southern problem, and that with Northern industrialization, slavery would ultimately end. For Northern textile owners, Southern slavery was very important because they needed cotton for their mills. This allowed many Northerners to argue that Southern slavery was the best way to produce this raw resource, and therefore was a system needing protection by the new nation. Others argued that the South produced other raw goods, such as the rice grown in South Carolina, which was vital to the Northern economy. The end of Southern slavery would result in the end of their economic structure. Consequently, for the South to join the Union, compromises were made between the Northern and Southern colonies.

Methodology

Professor Bruce Berg describes seven key elements needed in order to conduct a qualitative research, in particular a historiography method. Berg then states that,
history is used synonymously with the word past and refers conceptually to events of long ago . . . Historiography, then, is a method for discovering from records and accounts, what happened during some past period, but it is not simply fact-centered; rather, historiography seeks to offer theoretical explanations for various historical events.\footnote{Burke Johnson and Larry B. Christensen, \textit{Educational Research: Quantitative, Qualitative, and Mixed Approaches} (Boston: Pearson, 2003); quoted in Bruce L. Berg, \textit{Qualitative Research Methods for the Social Science} (Boston: Pearson, 2009), 296.}

The focus of this research is the study of events occurring in colonial South Carolina that caused legislation (statutes) to be written to help maintain and strengthen the institution of slavery. Those statutes were then brought to the Constitutional Convention of 1787 as a negotiating tool for the South that slavery was needed for their economic development, and then was used as a way to solidify the system already developed in South Carolina. Therefore, this Afro-centered historical research focuses on the examination of various events in American history (and government) that will provide a better understanding of colonial behaviors and thoughts that would otherwise be entrapped in the European historical analysis. Finally, "[o]ne cannot fully evaluate or appreciate advances made in knowledge, policy, science, or technology without some understanding of the circumstances within which these developments occurred."\footnote{Neil J. Salkind, \textit{Exploring Research} (Upper Saddle River, NJ: Prentice Hall, 2008); quoted in Bruce L. Berg, \textit{Qualitative Research Methods for the Social Science} (Boston: Pearson, 2009), 298.}

Historiography is then helpful in explaining the use of the Easton Model and the workings of political governments, because it provides the historical information needed for analysis of the American political / governmental system. The influence of South Carolina on the American Constitution necessitates an examination of how political
structures work. During the 1960s, David Easton developed the Easton Model, which is designed to show the process by which a political system is able to continue as a structure of government and to maintain stability during times of change. The Easton Model is used to analyze the reasons particular laws were passed during Colonial America and then adopted into the American Constitution. Easton describes political systems using two concepts, persistence and maintenance. Persistence means all governments desire to maintain their current system and govern it in some fashion that never changes.\textsuperscript{19} He notes that even though this is rarely an issue, some political systems may undergo changes that do not place the survival of the system at risk. Maintenance then becomes the most applicable notion of how a system works (see Figure 1). In 1787, the colonies disturbances came from the debate over slavery and in particular, the economic need for it. Battle lines were then drawn between the North, which was more industrial, and the South, which was more agricultural. The Constitutional Convention of 1787 then solved these issues through forms of neglect, cooptation, political repression, and substantive policy in order to ensure the formation of an American Government. Therefore, "governments seek to maintain the basic values and relationships that characterize the society, economy, and polity . . . for any given society at any given time, the identification of these basic or 'system' values and relationships."\textsuperscript{20}

\textsuperscript{19} Robert C. Smith, \textit{We Have No Leaders} (New York: State University of New York, 1996), 4.

\textsuperscript{20} Ibid., 5
Conversely, it is important to remember that with any system there are issues that arise that must be confronted, which can be described as stress or disturbances. Stress refers to conditions that challenge the capacity of the system to persist. Disturbances are activities in the system that are expected to dislodge it from its current pattern or process. According to the Easton Model, "any time a disturbance leads to change of the essential characteristics of a type of system, those that best define the characteristic way in which a system operates . . . we can say that the system has been put under stress." The model views the environment from which the stress comes, economic or social, as input. These inputs can come in one of two forms, systemic or non-systemic demands.

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21 Ibid.
22 Ibid.
Systemic demands do not challenge the system, while non-systemic demands often challenge the basic system principles or characteristics. The output of systemic and non-systemic demands can vary. Forms of output include neglect, substantive policy, cooptation and political repression. In this historical analysis, the Easton Model helps explain how colonial governments dealt with the issue of slavery during the Constitutional Convention. Although not the main issue during the 1787 Constitutional Convention, slavery was an issue that, if not solved, would lead to serious problems for the new government being formed.

Research Question

The primary research question to be addressed is what impact did the South Carolina statutes have on the writing of the American Constitution, especially as it relates to race and the institutionalization of slavery?

Limitations

An obvious limitation of this research is the lack of inclusion of the entire original thirteen colonies, especially those in the South, as contributors to the final legislation included in the Constitution. The selection of South Carolina as the focus of this research was based on the large number of slaves in the colony and the power its delegates displayed during the Constitutional Convention.

Organization of Chapters

The succeeding chapters discuss the influence of South Carolina’s statutes on the American Constitution. The Literature Review in Chapter II discusses research related to colonial South Carolina between 1600 and 1787, provides historical background of the

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settlers of South Carolina, discusses the treatment of African slaves, and lastly offers evidence that there was a racial and economic undercurrent that supported the system of slavery. Chapter III details how South Carolina rose as the voice of the South by presenting comparisons with the other colonies and their dealings with their slave labor. This chapter provides the historical background that created the need for the Constitutional Convention of 1787. Chapter IV presents an overview of South Carolina statutes that targeted African slavery as well as attempts by South Carolina and southern colonies to control slavery through legislation. It further demonstrates the determination of South Carolina’s delegates to maintain and protect the institution of slavery through the American Constitution. Finally, Chapter V presents the conclusion of the research and recommendations for possible future research on the topic.

Definition of Terms

**Systemic Racism:** “The complex array of anti-black practices, the unjustly gained political-economic power of whites, the continuing economic and other resource inequalities along racial lines, and the white racist ideologies and attitudes created to maintain and rationalize white privilege and power. Systemic here means that the core racist realities are manifested in each of society’s major parts . . . the economy, politics, education, religion, the family . . . reflect the fundamental reality of systemic racism.” 25

**Afrocentricity:** “A mode of thought and action in which the centrality of African interests, values, and perspectives predominate. In regards to theory, it is the placing of African people in the center of any analysis of African phenomena. Thus, it is possible

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for anyone to master the discipline of seeking the location of Africans in a given phenomenon.\textsuperscript{26}

\footnotesize{\textsuperscript{26} Molefi Kete Asante, \textit{Afrocentricity: The Theory of Social Change} (Chicago: African American Images, 2003), 7.}
CHAPTER II
LITERATURE REVIEW

The *Handbook of Black Studies* and *The Encyclopedia of Black Studies* by Molefi Kete Asante and Maulana Karenga offer an Afrocentric point of view for conducting research and literature reviews. The authors assert that, Africana Studies' greater autonomy will be achieved only through a redefinition of the discipline not by subject matter, but as some scholars have suggested, by the systemic and conscious adoption of a conceptual framework generated by African people. This conceptual framework, also known as Afrocentricity, should function as a metaparadigm and foster the creation of theories, the articulation of specific research questions, and the use of certain methods of inquiry, all providing Africana Studies scholars with unique disciplinary insights and Africana Studies with more resistant boundaries.¹

With this assertion in mind, writing and researching from an African-centered mindset can help uncover and fill gaps in the understanding of colonial South Carolina and its political influence during the creation of the American Constitution. To further help with the development of this voice, Bruce Berg's *Qualitative Research Methods for the Social Sciences* provides historiography as a method to conduct this particular research.

"Historiography is a method for discovering, from records and accounts, what happened during some past period, but it is not simply fact-centered . . . [it] seeks to offer

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theoretical explanations for various historical events.\textsuperscript{2} Therefore, when used with an Afrocentric construct this allowed the researcher to expand the understanding of the U.S. Constitution as a document based heavily on policy constructed in the Colony of South Carolina from the late 1600s through 1787.

\textit{In The Matter of Color}, Leon Higginbotham provides a descriptive analysis of the life of the black population colony by colony throughout Colonial America. Higginbotham’s work provides details, colony by colony, of all laws passed prior to the U.S. Constitution. This is key because it allows a comparison to be made between the colonial statutes and the Constitution. Furthermore, it shows the relationship that Colonial South Carolina had on the wording of the Constitution more than any other colony during the colonial period due to its large slave population. For example, the laws passed in South Carolina to monitor the slave population movements around the colony were used as the basis for the fugitive slave law found in the U.S. Constitution. "The Legal Status of the Slave in South Carolina, 1670 -1740" by Eugene Sirmans discusses the life of a slave in the colony of South Carolina. This article discusses slavery statutes from the beginning of the colony to the start of the Revolutionary War. Although the work is not as detailed as Professor Higginbotham’s, it provides an analysis into the mindset of the colonists in the development of the slave statutes as a way of controlling their slave labor. \textit{Colonial America: A History, 1585 -1776} by Richard Middleton, like other texts, offers a description of each American colony: their political and religious structure, local governments, and more. The main purpose of Middleton’s text is to provide a description of life in the colonies from 1585 - 1776. This includes the colonists

\textsuperscript{2} Bruce Berg, \textit{Qualitative Research Methods for the Social Sciences} (Boston: Pearson, 2009), 296.
dealing with each other, and its enslaved population; furthermore the results of these interactions which caused laws to be made in order to maintain order in the colony. As with Berlin's work, Middleton's research provides a picture of events in the colonies surrounding South Carolina. These events (runaways, rebellions, etc.) may have led them to make compromises during the 1787 Convention regarding the issue of slavery. *Foul Means: The Formation of a Slave Society in Virginia, 1660 – 1740* by Anthony Parent, Jr. builds upon the information in Middleton's book. Colonial Virginia's laws are related to the creation of a slave society. Virginia's laws are of particular importance because this colony set the standard for slave laws. The only difference between Virginia and South Carolina is the severity of punishments given to those who did not follow the statues, which is a result of South Carolina having the larger slave population.

*Capitalism and Slavery* by Eric Williams and *Black Awakening in Capitalist America* by Robert Allen discuss the impact that the institution of slavery had on the economic structure of the South and country as a whole. The literature suggests that each colony passed comprehensive laws that allowed the colonists to maintain control of the slave population, the source of their economic prosperity. The delegates argued that without manual labor, both the North and South would suffer because both regions relied on manual labor to produce raw goods. Both texts demonstrate that, because of its large slave population, colonial South Carolina is prominent in the literature related to colonial America and the issue of slavery. Both authors illustrate a picture that South Carolina, due to its large slave population, was the center piece in how all other Southern colonies would govern their slaves through legislation.

James Oliver Horton, in their companion book to the PBS series *Slavery and the*
Making of America, discuss the importance of slavery to South Carolina. Some colonists described South Carolina as “more like a Negro country than like a country settled by white people.” This resulted in South Carolina becoming the leader regarding slaves, as well as slave-produced goods. The location of South Carolina is important. Its development as a colonial power emerged because its climate was the most similar to that of the West Indies, which allowed for crops such as rice and sugar to be cultivated.

Two books offer a clearer understanding of governmental structures, A Framework for Political Analysis, written by David Easton and Robert Smith’s We Have No Leaders, both analyze how political structures are created and utilized. David Easton developed what is now known as the “Easton Model.” Professor Robert Smith analyzed this model as a way to understand the way that the American government handled the civil rights movement. Although neither of these authors discuss the colony of South Carolina, their explanation of governmental structure relates to the current research as a way to examine political structures. The Easton Model primarily focuses on how stress or disturbances are handled by government structures. Some of the stress that helped create the U.S. Constitution was the failure of the Articles of Confederation. These failures included, but not limited to, the lack of central government and a way to pay back debt created through the American Revolution.

Donald S. Luts’ "The Articles of Confederation as the Background to the Federal Republic" and Jack Rakove’s "The Legacy of the Articles of Confederation" discuss how the failure of the Articles of Confederation led to the formation of the American Constitution. The primary failure was the attempt to unify the colonies under one form of

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3 James Oliver Horton and Lois E. Horton, Slavery and the Making of America (New York: Oxford University, 2005), 32.
government. That one form of government, Federalism, would assist all colonies in need or distress, especially with rebellions and the issues of runaway slaves in the Southern colonies. Daniel J. Elazar wrote in *American Federalism: A View From the State* that the fundamental reason that Federalism works is the understanding between the states and the federal government, that they need each other and must work together for the benefit of their citizens. Through Federalism and compromises written within the Constitution, states, both North and South, were assured that in times of need, each would assist the other, which is very important to understand when interpreting how the colony of South Carolina affected the language found in the U.S. Constitution.

Joe Feagin, one of the leading authors on race, discusses race throughout the history of America in his book, *Racist America*. He states that the Constitution created a structure to "maintain separation and oppression at the time and for the foreseeable future." He states that the document is racist and was created with the intention of maintaining the status quo. While he does not analyze South Carolina's influence on the creation of the Constitution, Feagin outlines the racial issues in America dealing with representation, education, and representation. His work is valuable to this research because it provides an excellent definition of systemic racism, which is a key term used throughout this research; he defines systemic racism as, "the core racist realities are manifested in each of society's major parts . . . the economy, politics, education, religion, the family . . . reflect the fundamental reality of systemic racism."5

Interpreting the Constitution is of fundamental importance to this research. Jeffrey

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5 Ibid., 6.
Jeffrey Goldsworthy describes many ways to interpret constitutions in his work, *Interpreting Constitutions*. He provides an outline for analysis and identifying the differences in major Constitutions throughout the world. This is important because not all Constitutions are the same; each can develop its own form of government, which can be Unitary, Confederal, or Federal systems of Government. In a Unitary system, the central Government gives power to subnational governments such as countries or provinces. In a Confederal system, the power is maintained by the local governments, which was found during the Articles of Confederation. Lastly, the Federal System, which represents the American system, divides power between the national government and the local government. In comparison, Jack N. Rakove focuses on the American Constitution and its original intent set forth by the framers during the Constitutional Convention of 1787 in the text *Interpreting the Constitution: The Debate over Original Intent*; which describes a technique for interpreting the Constitution’s original intent created by the delegates of 1787. This technique is to take into consideration of the Charles Beard theory that the U.S. Constitution was written with the founding fathers thoughts and interests strongly considered and protected. In 1987, Thurgood Marshall delivered one of his famous speeches, *The Constitution: A Living Document*, in which he indicates that the Constitution has changed over the years and also how it is interpreted; however, it’s original intent was based on the separation of races for economic gains. He argues that the framers may not have intended that the issue of slavery would take a war to be decided, but due to the economics involved it was a foreseen future.

Literature that discusses the racial and economic undercurrent of slavery includes David Stewart’s *The Summer of 1787* and Paul Finkelman’s *Slavery and the Founders*.
Stewart details the interactions taking place during the Constitutional Convention between the Northern and Southern Delegates to pass policy. He also discusses the role of South Carolina’s delegates in lobbying for certain language to be included in the Constitution dealing with how slavery would be protected in the South, in particular, the discussion related to the Three-Fifths Compromise; which details how all slaves would be counted as Three-Fifths of all free persons, Indians whom paid taxes, and indentured servants. In his discussion of the Three-Fifths Compromise, Stewart does not indicate that race was a factor. He does discuss the influence that two South Carolina delegates (John Rutledge and General Charles Cotesworth Pinckney) had on pushing the legislation forward. Finkelman discusses not only the role that the issue of slavery had on the Convention, but also the role slavery played in the building of the country after the Convention as a way to get the U.S. out of debt from the war. Finkelman focuses on Thomas Jefferson and his dealings with slavery. However, in discussing the Convention, Finkelman’s analysis of the founders of the Constitution provides information useful in the understanding of South Carolina’s role in protecting the institution of slavery.

Literature discussing the historical backgrounds of the settlers begins with Benjamin Quarles’ *The Negro in the Making of America*. The author details the central role of blacks in the development of America in the colonies. This is seen through the legislation created in the colonies to control the slaves. He argues that without blacks (and slavery), America would not be the power that it is. Furthermore, he agrees with Vincent Harding’s *There is a River*, which discusses some of the same material, focusing on race issues that blacks faced in colonial America and how similar conditions were found on the island of Barbados. This is extremely important because research shows that
Barbados is the cultural background of the South Carolina colonists. Howard Zinn’s *A People’s History of the United States 1492-Present* and Peter Kolchin’s *American Slavery 1619–1877* both focus on the overall struggles of African slaves and how they developed America through manual labor. Kolchin’s work gives a detailed discussion of the impact of slavery on the law throughout the American colonies, particularly South Carolina, while Zinn indicates that even before the Revolution against Britain, some racial classifications were already made. He states,

> The inferior position of blacks, the exclusion of Indians from the new society, the establishment of supremacy for the rich and powerful in the new nation—all this was already settled in the colonies by the time of the Revolution. It could not be put on paper, solidified, regulated, made legitimate, by the Constitution of the United States.6

Judith Carney’s *Rice Milling, Gender and Slave Labor in Colonial South Carolina*, which provides insight into life on the plantation, supports this view. She details the process of rice cultivation in South Carolina and the factors that race and gender played in the labor force. This included the division between men and women on the plantation as far as duties and responsibilities. Rice became the staple crop of South Carolina, demanding a large labor force for the cultivation of the raw goods. Carney suggests that the male-female dynamic was very important to the colonists, who used it as a means of control. This is commonly described as the “Willie Lynch” phenomena of putting the male and female against each other as a means of division of the family. This literature illustrates how South Carolina and the South were very dependent on slave labor as a way to manufacture raw goods. Peter Mancall, Joshua Rosenbloom, and Thomas Weiss collaborated on the article *Slave Prices and the South Carolina Economy, 1772–1809*,

which discuss the impact of rice as the staple crop of the colony. The article reviews the role that slave prices, based on need for labor, played in building the economy of South Carolina both before and after the American war for independence from Britain. The authors argue that South Carolina made the demand for slavery so high that it could be used as a bargaining tool during the Convention because of its importance to their economic structure.

W.E.B. Du Bois' *Black Reconstruction in American 1860-1880* and David Carlton's *The South, the Nation and the World: Perspectives on Southern Economic Development* discuss the economic impact slavery had on the Southern economy. Neither of these authors focus on any one colony in particular but both demonstrate that slavery was as central then as agriculture is today in the U.S. Midwest. The value in these works is the analysis that without slavery as a central theme of the South, the economy would have suffered drastically.

Du Bois' *The Suppression of the African Slave Trade to the United States of America, 1638-1870* and James Pope-Hennessy's *Sins of the Fathers: The Atlantic Slave Traders 1441–1807* focus on the Atlantic slave trade. Immigrants from the West Indian Island of Barbados, who originally came from England, settled the colony of South Carolina. Ira Berlin's *Many Thousands Gone: The First Two Centuries of Slavery in North America* provides a road map of the institution of slavery in America. He discusses how each American colony differed in its dealings with slavery through laws and life styles. Berlin provides vivid research into the lifestyles and environments of the colonies, helping to create the backdrop for understanding the laws.
*Black Majority* by Peter H. Wood discusses the role of blacks in South Carolina from 1670 through the Stono Rebellion in September 1739 as the primary source of economic growth. He also provides details about the racial and physical issues facing blacks in South Carolina and how the law helped shape many of the attitudes towards blacks during this time. More importantly, he discusses the effects of the Stono Rebellion in the colonies with respect to race relations and law. The Stono Rebellion forced settlers in South Carolina to re-evaluate how their slave population was monitored and punished, which led to changes in colonial laws. The fear of further uprising was not only a constant fear but also a reality for the South Carolina colonists; and hence the fear was seen in the legislation created after the Stono Rebellion.

Echoing Higginbotham’s work, Paul Finkelman *Defending Slavery* outlines how Southerners used race for one defense of slavery. He states that race was,

Necessary for two reasons. First, in the end, only race could counter the obvious point that slavery contradicted the egalitarian and free labor basis of American society. Second, if race was not the ultimate basis of slavery, then all of the arguments in favor of slavery might also be applied to poor whites or to immigrant whites.7

For the South, defending slavery was key to their economic growth, thus supporting its importance of race in the creation of the Constitution.

Even though George Fredrickson’s book, *Racism: a Short History*, tends to focus on contemporary times, it does offer some discussion of America related to its independence from England. In his chapter discussing the rise of modern racism, Fredrickson gives this outcome of racial attitudes during Colonial America. He states:

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African Americans . . . spent most of their first three hundred years on the North American continent as a servile labor force. Slave masters or landlords with sharecroppers have a stake in the preservation of the subordinated group because its labor is essential to their prosperity. So long as members of the group stay ‘in their place,’ they may be treated with the paternalism that is often associated with vast power differentials. But if they seek to rise out of their place and demand equal rights with members of the dominant group, they are likely to be exposed to a furious and violent form of racist reprisal.  

*Before Color Prejudice* by Frank M. Snowden, Jr. discusses the background of racism before colonial America. This work broadens the background of events occurring during colonial America. There is also discussion of European civilizations (like Rome and Greece) and their interactions with the continent of Africa, but the focus of this book is not race or prejudice during colonial times. Snowden lends support to the argument that many of the colonists believed that all great societies used an enslaved labor force by using Rome as an example. It was believed that this allowed the men of power and wealth to focus on the development of the society.

Overall, the literature used for this research reviewed a great quantity of primary and secondary data, most of which rarely supported the role of race in the formation of the U.S. Constitution. Hence, the value and need of this research, not only for the field of Black Studies but also for those of Political Science and History, is to show that the U.S. Constitution was based on racial legislation mainly from the colony of South Carolina.

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CHAPTER III
HISTORICAL PRESENCE OF SOUTH CAROLINA

Asante's Location Theory serves as a means of understanding the importance of location in political outcomes and assists in analyzing the influence of the colonies on the development of the U.S. Constitution. There were significant differences between the Northern and Southern colonies. These differences resulted in the South becoming an economic force. This economic power allowed South Carolina to wield political influence during the Constitutional Convention of 1787.

The economic divergence between the North and South started as early as the late seventeenth century. This divergence coincided with the development of formal racial slavery, as well as the increase in the production of staple crops (such as tobacco) in the South. The result was the rise of the plantation system, a system that never developed in the North.¹ As noted in earlier chapters, this divergence between North and South was due to differences in climate and land rather than the backgrounds of the settlers. Winters in the North were harsher than Southern winters, which negatively influenced attempts to grow cotton. Climate issues led to a rise in manufacturing in the North. Before the rise in manufacturing in the North, settlers engaged primarily in fishing and raising hogs. To spur their economy, the inhabitants of the Northern colonies pursued a development

strategy based on a mixture of enterprise, service, and local and regional trade.\(^2\) The Southern colonies made their displeasure known; they would not support a nation that did not protect the Southern economy through slavery.

The Southern colonies relied on staple crops like rice and tobacco that required a large population of slave labor. As a result, they became very organized "economically, socially, politically, and culturally around the plantation complex more than anything else."\(^3\) The first of the Southern colonies to develop the plantation system was South Carolina. With rice as the staple crop, the plantation system became the dominant system in the South until about 1770. The economic power resulting from the production of rice later translated into political power for South Carolina and its neighbors. The North understood that the Southern economy was important to the future of the nation: Without the Southern economy and its slave labor, the North would not be able to thrive as a viable force. Furthermore, the South, due to its large slave labor force needed the protection of a central government. These factors were the basis of arguments put forth by South Carolina to ensure that their Southern system would continue to develop. They were also the foundation of the argument for the legalization of slavery.

Several events led to the Constitutional Convention, such as debt incurred from the Revolutionary War, the separation of states, and the lack of a central government, etc. The emergence of South Carolina as a political and economic power in the South and the need for a federalist government due to the failure of the Articles of Confederation to create a unified country were just two of those events.

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\(^2\) Ibid., 16.

\(^3\) Ibid., 14.
Colonial Virginia set the precedent for using laws to control slave labor. As the colony got older, it became more political through its leaders such as George Washington and Thomas Jefferson. North Carolina emerged as an apprentice to Virginia due to its close geographic proximity; however, South Carolina did not share this closeness. South Carolina used slave labor to produce goods and to build both economic and political power unmatched by any other Southern colony. South Carolina’s success influenced Colonial Georgia to structure its government similarly. The groundwork was set for the South to use its economic influence during the Constitutional Convention.

The Southern Colonies

Virginia was the leader of the South for most of the colonial period leading up to the War for Independence. However, with the growing slave population and the increased rate of production of staple crops, like rice, in South Carolina, the power started to shift farther south. South Carolina influenced Georgia to become a direct reflection of South Carolina’s practices. North Carolina, on the other hand, served as a barrier for South Carolina, deflecting the influence of Virginia. Therefore, maintenance and expansion of slavery, with its laws for the colony of Virginia emerges as the source for legal action pertaining to the containment and control of its needed labor force, that is, those whom Southerners considered not as human being but rather as “chattel property.”

Virginia, the home of Jefferson, Madison, and Washington, served as a model to the American colonies, particularly those in the South. Virginia’s legislation related to slavery influenced the other Southern colonies. South Carolina would expand upon the Virginia model. Virginia was the first of the American colonies. The London Company
set sail for the New World during the winter of 1606 and arrived in the Chesapeake area during the spring of 1607.

Although the first African slaves arrived in Jamestown in 1619, from the early 1600s until about 1660 there seems to have been no systematic effort in Virginia to define the rights of blacks as slaves. English law governed Virginia in 1619, and under that law, all Africans were free. According to Philip A. Bruce, the blacks brought to Virginia in 1619 came as slaves, whereas J. C. Ballagh's *A History of Slavery in Virginia* contends only six years later that they were indentured servants whose statutory enslavement did not begin until 1660. Even in these early years, there were struggles over who was a slave and who was not. This can be seen in the early cases related to race. The first case to bring the issue of race to the forefront was the Re Davis case in the early 1600s, which raised more issues than it actually answered.

The decision notes that Re Davis's "mate" was black, but the court does not disclose either person's sex or legal status. It also gives no clues of the significance of Davis's public whipping before an "assembly of Negroes and others." Yet the decision goes on to infer that the crime was in fact that Davis, a white male, was in violation of the laws of the church by being married to a black female. This is one example of blacks and whites not observing the moral laws implemented in Virginia. By 1650, although not all blacks were slaves, the white colonists were already beginning to establish a process of debasement and cruelty reserved for blacks only and in most aspects of their lives.

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5 Ibid., 23.
The Re Davis case focused on the alliances forming between indentured servants and black slaves and whites. During this time, whites were punished less severely for their involvement with blacks than blacks that had alliances with whites. As early as 1639, the colonists started the passage of legislation that would give them control over the black population.

Economic independence became the primary focus of Virginia and thus became the model for the South. It was their decision to legitimize the enslavement of Africans and “involved a choice to establish a coercive state.” Virginians then began to associate “light-skinned people with civilized and dark-skinned people with savages. This racism figured significantly in their decision to enslave Africans and to eschew the possibility of enslaving Europeans or Native Americans.” However, in order for this to work, the planters of Virginia had to create a wedge between laboring blacks and whites. Otherwise, “without a law or civil act . . . blacks could have the same expectations as other immigrants to Virginia.” The failures of this law in their system of government would later become South Carolina’s strength.

Georgia was heavily influenced by the colony of South Carolina. Georgia was first chartered as an English colony in 1732 (it was the last of the 13 original colonies), and the belief was that Georgia would not follow the same path as its predecessors regarding slavery. During January of 1735, the English trustees passed a law banning

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7 Ibid., 106.

8 Ibid., 107.
slavery and the importation of Africans into the colony after June 24, 1735. This law was a reaction to feelings that slavery was in violation of the trustees’ religious tenets and a direct violation of English law. Nevertheless, England continued its involvement in the slave trade.

Georgia did not enforce its laws banning slavery. Georgians were able to maneuver around the anti-slave laws by creating a system of slave loaning. This allowed Georgians to receive “loaned” slaves from their neighbors in South Carolina, which was allowed by the anti-slave law. It should be noted that some of England’s poorest citizens settled the colony of Georgia, and the reason for the initial banning of slaves was the belief that its colonists would not be able to afford owning slaves. The courts in Georgia allowed illegal ownership and use of slaves by accepting claims of South Carolina residents who captured Georgia’s runaways. Thus resulting in “Georgians’ [ability] to ‘lease’ slaves from South Carolina owners only if the slave was apprehended . . . the court sanctioned this ruse by returning the ‘leased’ slaves to the South Carolina owners, who could reimburse the Georgians for the loss.”

The turning point for Georgia came after a series of pro-slavery petitions to the trustees. The first came in 1738, only three years after the initial slavery ban, by residents of Savannah. Residents of Savannah did not want to partake in the institution of slave labor. Thus, the restrictions in the 1735 law pertaining to land ownership were in place to maintain the original military goals of the colony and to maintain population numbers of the colony. Pressure from residents of the colony started to change the social environment.

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10 Ibid., 233.
from anti-slavery to pro-slavery due to the strong influence from their Northern neighbor; South Carolina.

Georgia saw a need for a slave population and, with the help of the courts, became a slave state. One of the arguments used to justify slavery was that the labor needed to maintain the crops and the plantations was more fitted for those of African descent rather than those of European descent. Due to a shortage of colonists, coupled with the likelihood of minimal availability of imported indentured servants, slavery was finally legalized in 1750.

The first system of government for Carolina was the Fundamental Constitution of Carolina. This Constitution divided Carolina into two separate provinces, North Carolina and South Carolina. Under this Constitution, each area would own an equal amount of land, but was later realized that this Constitution could not be implemented in such a small colony; so temporary laws were implemented as a way to solve this issue. The Carolinas began when interest in colonies south of Virginia started to rise, with some settlers moving South in search of new land. Threats of Spanish retaliation and attacks by Indian tribes slowed the move south. Even though many of the early settlers came from Virginia and were more interested in furs than farming, the influence of the Barbadian value system provided the basis of the treatment of slaves in the colony in regards to harsh treatment of their slaves. The colonists, as a whole, came from a hierarchical society where everyone had their place. As noted by Peter Kolchin, "They saw nothing particularly noteworthy about some people working, even under constraint, for the well-being of others."\(^\text{11}\) Virginia was distant in communications because the territory between

the two colonies tended to be very harsh. This changed in 1655 when England captured Jamaica from the Spanish, a sign that Spanish power was on the decline.

The Articles of Confederation and the need for Federalism

The biggest problem in post-colonial America was the lack of a strong central government. This resulted in individual states instead of a united nation under the Articles of Confederation. Donald S. Lutz described the Articles of Confederation when he said,

The Articles functioned as the first national constitution of the United States and, as such, reflected American Political theory as it emerged during the Revolution. Equally important, a textual analysis reveals the extent to which the 1787 Constitution was a logical extension of the Articles of Confederation. Most of the Articles were incorporated in the U.S. Constitution, and several key changes found in the later document were present in embryo in the Articles of Confederation.12

For instance, “the three-fifths clause regulating the apportionment of representation in the House of Representatives had its genesis in the congressional revenue plan of April 1783, which was framed as an amendment to the Articles.”13 Therefore, the issue with the infamous three-fifths clause was a lack of enforcement. This was common with the Articles of Confederation; it was not a perfect document but it paved the way for the U.S. Constitution.

During the Constitutional Convention, because of the issues with the Articles of

Confederation, there were many compromises between the states. The compromises allowed the Northern and Southern states to cooperate to create a working document that would lead the country into the future. During the writing of the Articles of Confederation, states were given various rights. The Southern states had many of their economic needs addressed as a compromise for preserving the Union. With the language of the document and the powers given to Congress, the federal government was ultimately victorious because the states always have to defer to the federal government for assistance.

Contractual relationships are the basis of the relationship between the states and the federal government. Daniel Elazar explains, "Contractual relationships are basic to a federal system that is founded upon a fundamental compact to begin with . . . it is the contractual relationship that makes possible large-scale intergovernmental cooperation to achieve common ends."\(^4\) This explanation demonstrates the power of the states in comparison to the national government. Local governments had power to an extent, but when there was something that requires federal assistance (like slave rebellions), a contract between the federal government and the states (the U.S. Constitution) became important. If a state was able to help its citizens without any federal funding, it would do so, but the U.S. Constitution was written to prohibit that. The states are considered workers for the federal government, with forms of taxes going to the federal government and to their local governments in the forms of earnings. The citizens of the states are also citizens of the federal government. When there is a question regarding the conduct of the state, citizens appeal to the federal government.

Elazar continues to explain the relationship between the states and the federal government in discussing their transfer of funds, stating,

These are relationships that involve nothing more than a formal agreement to share resources or tasks without formal transfers of funds or personnel from one government to another. They are often used to prevent needless duplication of time, money, and effort or to enhance the possibilities for more comprehensive execution of particular programs . . .

The states lose some control and power in exchange for the ability to share resources and funds with the national government. Be it the right to transfer goods via the Mississippi River or the taxing of products and services, this relationship ultimately helps both sides. This relationship, however, makes the states vulnerable to federal restrictions or rules of programs enacted by the federal government. Therefore, if the states do not follow certain rules, the result could be a restructuring of funding or direct involvement by the federal government. Ultimately, the power given to the federal government helps both sides. However, the expansion of the federal government’s powers did come without pitfalls.

Elazar also states “one of the major political factors encouraging sharing is the ability of interests unable to gain satisfaction on one plane of government to turn to another in an effort to better their fortunes.”\(^{16}\) The need for help from other colonies, and eventually Southern states, can be seen in the legal struggles of South Carolina with the maintenance of its slave codes.

\(^{15}\) *Ibid.*

\(^{16}\) *Ibid.*, 32.
CHAPTER IV

FINDINGS AND DISCUSSION: CONSTITUTIONAL PROTECTION FOR THE SOUTH

Remarks by General Charles Cotesworth Pinckney, a delegate at the Constitutional Convention, reflect the impacts of colonial South Carolina on the Convention. Pinckney stated,

I am of the same opinion now as I was two years ago [in 1785]... while there remained one acre of swampland un-cleared of South Carolina, I would raise my voice against restricting the importation of Negroes... that the nature of our climate, and the flat swampy situation of our country, obliges us to cultivate our lands with Negroes, and that without them South Carolina would soon be a desert waste.¹

This statement echoes the beliefs of many Southerners that slave labor was a necessity for continued economic growth of the colonies. The first black slave brought into the colony of South Carolina was believed to have arrived sometime around 1670. Still, it was not until the late 1690s when rice became the chief crop of the colony, that enslaved Africans were to be imported in large numbers. Before this time, migrants from the West Indies, particularly Barbados, heavily populated the colony. John Locke, author of the "Fundamental Constitution of 1669," stated, "Every Freeman of Carolina shall have absolute power and authority over Negro slaves, of what opinion or Religion so

ever."\(^2\) This statement suggests that every citizen of South Carolina would have power over all slaves, regardless of religious background. Although the colonists never accepted this document, the racial policy put forth by the document became the acceptable legal thought and standard for South Carolina. South Carolina had one of the largest black populations in the colonies. As early as 1680, blacks accounted for 17% of the entire South Carolina population. The next closest in size was the colony of New York, with a black population of 12%.\(^3\) As a way to promote and maintain the importation of enslaved Africans into the colony, a head-right system was implemented. The head-right system is a form of a grant given by the government to help encourage settlers to come and buy land. Every free emigrant to the colony before March 25, 1670 who was sixteen years or older received 15 acres of land for every male slave they owned and 100 acres for every female slave.\(^4\) As a result, exports of rice soared from 12,000 pounds in 1698 to 18 million pounds by 1730.\(^5\) As the colony became more established and prosperous, colonists were able to purchase slaves on credit and still receive the benefits of the head-right system.

The first comprehensive slave code found in South Carolina’s history was written in 1712 and was repeated in later acts of 1722 and 1735. The preamble to the 1712 slave code states,

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\(^4\) Ibid., 165.

Whereas, the Plantation and estates of this Province cannot be well and sufficiently managed and brought into use, without the labor and service of Negroes and other slaves; and forasmuch as the said Negroes and other slaves brought unto the people of this Province for that purpose, are of barbarous, wild, savage natures, and such as renders them wholly unqualified to be governed by laws, customs, and practices of this Province; but that it is absolutely necessary, that such other constitutions, laws, and orders, should in this Province be made and enacted, for the good regulating and ordering of them, as may restrain the disorders, rapines, and inhumanity, to which they are naturally prone and inclined; and may also tend to the safety and security of the people of this Province and their estates... 

This code was primarily a statement focused on the understanding that slavery would be the basis for economic growth in South Carolina. Charles Pinckney declared, “a prohibition of the slave trade would be an exclusion of South Carolina from the Union, because South Carolina and Georgia cannot do without slaves” for reasons of economic necessity. The 1712 Act was followed by the slave codes of 1722 and 1735, but there were no major revisions; thus, 1712 appears to be the foundation for much of South Carolina’s early slave legislation. However, in 1740 South Carolina passed its most extensive slave code. The earlier reference to the necessity of slavery was deleted and replaced by “may be kept in due subjection and obedience.”

The slave code of 1712 covered many issues involving slavery issues, which was then later found in the American Constitution in one form or another. In order to regulate who could and could not be free, the code stated, "All Negroes... who were or will be bought or sold as slaves 'are hereby made and declared slaves, to all intents and

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6 Ibid., 167.

7 Paul Finkelman, Defending Slavery: Proslavery Thought in the Old South (Boston: University of Tulsa College of Law, 2003), 24.

8 Ibid., 168.
purposes'; except those who have been freed or who can prove their freedom.\textsuperscript{9} This issue would later come into play in the American Constitution, in the \textit{Dred Scott v. Sandford} (1857) case, which questions if blacks were seen as citizens or slaves when the Constitution was originally written.

In this particular case, Dred Scott was a slave originally from the state of Missouri who moved and lived in Illinois from 1833 to 1843. Illinois was a free state under the provisions of the Missouri Compromise of 1820. Scott used this provision to claim that he was free, even though he moved back to Missouri, using the premise that he was free in Illinois thus he is free in Missouri. Justice Taney argued, that under Articles III and IV of the U.S. Constitution Scott was in fact a slave. More so, no individual that was a decedent of a slave could ever be a citizen under Article III of the Constitution. The Court then ruled, in a 7 to 2 vote, that the Missouri Compromise was unconstitutional.

Early American colonies feared that their slaves would run away or engage in uprisings. Under the 1712 slave statute, slaves were only allowed to travel with their master or another approved person; furthermore, it was legal to whip any slave found without an approved pass, or the owner paid a fee for not doing so. The 1712 statute made it clear that the slave community was a concern and obligation for the entire colony to maintain. Those who formed patrols received rewards for capturing runaways.\textsuperscript{10}

By 1735, four years prior to the Stono Rebellion, the fear of resistance was so great that the legislators allowed death upon any slave demonstrating the slightest

\textsuperscript{9} Ibid., 169.

\textsuperscript{10} Ibid., 176.
amount of rebelliousness. The Stono Rebellion was one of the largest in South Carolina history, and many felt it was caused by the lack of strong legislation restricting the movements of slaves. Thus, the penalties for the crime of running away were very harsh. Any slave above the age of sixteen was subject to different provisions, dependent upon the length of time between running away and capture. A first offense could result in a public whipping of forty lashes. A second offense could result in being branded on the right cheek with the letter “R.” A third offense could result in forty lashes and one ear being cut off.

As a way to stem the tide of runaways, South Carolina passed in 1721 the "maintaining a Watch and keeping Good Orders in Charles Town" act as a way to control their black slave labor. This act empowered any “watchmen” to stop blacks upon sight and confine them in jail until the next morning. This also applied to blacks gathering in public during the evening hours. The “watchmen” were a very organized group. Peter Wood commented, "There was a commander and two subordinate officers, one of whom was in command each night and all of whom were charged with the 'Quelling and Defeating of any Disorders Insurrection or Tumultuous Designs formed and carried on by any Negroes or other slave.'"\footnote{Peter H. Wood, 
*Black Majority* (New York: W.W. Norton & Company, 1974), 273.}

In 1737, the laws were changed to deal with the shortcomings of the previous laws. The new law required all blacks traveling off the plantation after 8 p.m. during the winter months and 9 p.m. during the summer to have a lantern with a candle or a ticket signed by their master stating their business. The patrol system was established in every
parish of South Carolina and conducted by the slave owners and businesspersons who had the largest personal interest in the slave system. In 1721, an act was passed that "merged the separate patrols with the colonial militia . . . to insure that the 'choicest and best' planters in the province could no longer 'screen themselves from doing such services in alarms as are required and ought to be done by men of their ability."12 From 1721 until the Civil War, the control of slaves rested upon the military authorities, who were viewed as the agency whose sole duty was to police slaves. In 1734, in an effort to tighten security of the patrols, the law of 1721 was changed. Under the new statute, even more structure was implemented. Patrols could question and search any black they found traveling without a white escort. They could also punish any black discovered outside of their plantation without a ticket. They could kill runaways and search the homes of slaves thought to be storing stolen goods or weapons. These changes in the law and the police structure, for the purpose of better controlling slaves, helped South Carolina become the leading authority in the handling of slaves. This added to the influence the state would have during the Constitutional Convention.

The Stono Rebellion changed not only the view of Africans who were slaves in South Carolina but also slaves throughout the colonies, including indentured servants. On September 9, 1739, slaves of South Carolina walked the streets demanding freedom. The exact cause is unknown, but the result was widespread fears over further uprisings in the colony. In South Carolina, the impact of the Stono Rebellion was best reflected in changes in the laws in 1740. The new laws directly supported racial slavery and control

12 Ibid., 274.
of the slave population. The new statute made it very clear that the killing of rebellious slaves was "hereby declared lawful, to all intents and purposes whatsoever, as fully and amply as if such rebellious Negroes had undergone a formal trial and condemnation."\(^{13}\) Unlike laws in the past, this law had no influence from the West Indies and was unique to South Carolina in particular.

The 1740 South Carolina slave code declared that all people defined as slaves would remain slaves for their lifetimes. The status of a child would be determined by the status of its mother. Those who challenged their slave status had many barriers in their way. A slave could claim freedom in the courts, but only if their "guardian" was present. This was not present in earlier South Carolina codes, marking this as the first time slaves lacked lawful power in the colony. If a slave decided to argue his freedom and lost, he or she would be subject to punishment that could include loss of life.

The new slave code did give some protection to the slaves, but the enforcement of these laws was limited due to the wording of the statute. The colony legislature stated:

And for the preventing the concealment of crimes and offences committed by slaves, and for the more effectual discovery and bringing slaves to . . . punishment, Be it further enacted . . . That not only the evidence of any slave, without oath, shall be allowed and admitted in all causes whatsoever, for or against another slave accused of any crime or offence whatsoever; the weight of which evidence being seriously considered, and compared with all other circumstances attending the case, shall be left to the conscience of the justices and freeholder.\(^{14}\)

The business of catching runaways caught in Georgia, on their way to Florida, became very profitable under the new law. The statute states that a man, woman, or child


\(^{14}\) Ibid., 197.
returned alive was worth between fifty and fifty-five pounds. If the slave was caught south of the St. John's River and brought back alive, the person who caught them could be paid up to one hundred pounds. This amount could drop down to fifty pounds if the slave was wounded in any way.

South Carolina's slave laws were unique because of their Barbadian heritage, the economic issues, and the safety needs of the colony. The Barbadian influence all but eliminated any questions of racial slavery. Winthrop D. Jordan defines a slave as:

In one sense it was, since the concept embodied in the terms servitude, service, and servant was widely embracive. Servant was a more generic term than slave was. Slaves could be "servants," but servants should not be "slaves". This principle, which was common . . . suggests a measure of precision in the concept of slavery.15

Thus, those colonists who owned slaves in the islands simply brought them to the mainland and maintained their definitions of 'slave' and 'servant.'

The 1740 slave code assumed that racial slavery in the American colonies was the rule and that slaves were the property of those who owned them. The general assembly stated, "slaves ought to be settled and limited by positive laws, so that the slave may be kept in due subjection and obedience . . ."16 This statue did give some responsibility to the plantation owners for their treatment of slaves, but the primary intent was depriving black slaves of their personal liberties in order to prevent further rebellions. This statue remained in effect for the duration of the colonial period, which ended with the Constitutional Convention of 1787.


16 Ibid., 192.
Southern Interest Dictates the Constitutional Convention

During the Constitutional Convention, South Carolina was one of the Southern states that were the most vocal about its reliance on and need to maintain the system of slavery. South Carolina had four delegates, and all came from similar backgrounds. John Rutledge, a 48-year-old lawyer and planter, was one of the more outspoken and influential delegates of the Convention. Rutledge was born into a large Irish family and was well educated under the rigid and selective education system during that period in England. He returned to the colony of South Carolina after his schooling was complete and began a successful law career. Once independence from Britain was declared, Rutledge played an active role in gaining recognition for the state of South Carolina to be recognized during the writing of the Constitution. This background made him an excellent choice to lead the “Committee of Detail” during the Constitutional Convention, the duties which included the writing of the Constitution.

Pierce Butler, a 43-year-old planter, was not as vocal as some other South Carolina delegates were. Originally, an immigrant from Ireland, he decided to pursue a career in the military. In 1771, he married a wealthy woman from South Carolina and resigned his rank in the military to take a more active role as a planter with his family. After the Revolutionary War, he remained a staunch patriot, even after losing much of his wealth and property. Butler was an active advocate for a national government that would maintain and defend the interests of Southern slaveholders like him.

The Pinckney cousins were also very vocal during the Convention, managing to ensure Southern interests were high on the agenda. Charles Pinckney was the son of a
wealthy lawyer and planter, but unlike many other children of wealth, he did not attend college. Instead, he received his education and legal training in his home city of Charleston. His major concern during the Convention was to have a strong central government, strong enough to ensure American rights to navigate the Mississippi River. He felt this would lead to economic growth for the young country. His cousin, Charles Cotesworth Pinckney, was also a prominent lawyer, planter, and political figure known throughout the colonies. Often known as General Pinckney, he was also an advocate for a strong national government that protected Southern interests.

Many of the delegates from South Carolina were slaveholders. They were also lawyers. This is an important point when analyzing the language that was chosen in the drafting of the U.S. Constitution. Many issues came up during the Convention in reference to slavery, but no other topic caused more discussion than how slaves would be represented. It is important to note that not everyone present was in support of the slave trade. David Stewart noted that, “on June 2, the Pennsylvania Abolition Society adopted an Address asking the delegates to end the slave trade. The Address warned: “In vain will be pretensions to love of liberty . . . while they share in the profits of a commerce that can only be conducted upon rivers of human tears and blood.”17

The Enumeration Clause of the U.S. Constitution, which is more commonly known as the Three-Fifths Clause, was introduced into the discussion around June of 1787 by either James Wilson from Pennsylvania, or John Rutledge. This clause states that all slaves would be counted as Three-Fifths of all other free persons including indentured

servants and Indian's whom paid taxes. The records differ, but it appears that Rutledge took the floor asking to revisit the "quotas issue" and then was seconded by Major Butler. Wilson took the next step by offering an alternative to Rutledge's motion, which was then seconded by General Pinckney. The motion that was seconded became known as the Three-Fifths Clause of the U.S. Constitution. Having the most to lose, the delegates who brought forth the issue of the Three-Fifths clause came from South Carolina.

There was opposition from the Northern states. Elbridge Gerry, a merchant from Massachusetts, was the major opponent of the Three-Fifths proposal on the floor. Many of the other delegates in the room found him to be a "hesitating and laborious speaker" and many tended not to respect his comments. However, Gerry did raise a question that went unanswered:

"Blacks are property, and are used . . . as horses and cattle . . . why should their representation be increased to the southward on account of the number of slaves, rather than on the basis of horses or oxen to the north?"\(^1\)

This question directly challenged the issues of blacks as property and of the humanity of African slaves.

Regardless of the dissent from some of the delegates, the issue of the control of enslaved Africans (in reference to seats in the House of Representatives) was focus of discussion. However, this was not the first time this issue had been a major challenge for the representatives. The Confederation Congress discussed the issue in March of 1783 and concluded the requisitions would be based on each state’s free population, in addition to three-fifths of their enslaved population, or what they called "others." Nevertheless, the

\(^{1}\) Ibid., 78.
most interesting issue and argument came from the Southern states in 1783, who were
concerned that the value of their slaves would raise their taxes too high. So again, the
issue of economics arose, and when James Wilson discussed this issue during the
Constitutional Convention, the Southerners took the stand that the Northern states took,
and the North found that the value of slaves was being overestimated.

Major Butler reminded the delegates of the Southern concerns when he stated,
"The security the Southern states want, is that their Negroes may not be taken from them,
which some gentlemen within or without doors, have a very good mind to do."\(^\text{19}\) For the
South, especially South Carolina, their slaves were the key to economic growth that was
supported by their imports and exports. The vocal General Pinckney again reminded the
delegates of his belief that the government should not have any issues with protecting the
property of all Americans, even if that property was slaves. He comments, "Property in
slaves should not be exposed to danger under a government instituted for the protection
of property."\(^\text{20}\) Edmund Randolph, a lawyer from Virginia, agreed with Pinckney in
stating that the Three-Fifths ratio would secure the future of slavery and thus the southern
economy. The lasting result of the Three-Fifths Compromise was that it would allow the
South to block any legislation attempting to regulate or end the slave trade due to the
large number of Southern politicians in Congress.

The Enumeration Clause, found at the beginning of the U.S. Constitution, Article
1, Section 2, and Paragraph 3, states, "according to their respective numbers, which shall

\(^{19}\) Ibid., 122.

\(^{20}\) Ibid., 121.
be determined by adding to the whole Number of free Persons, including those bound to
Service for a term of Years, and excluding Indians not taxed, three-fifths of all other
Persons."21 Within the U.S. Constitution, this is the very first reference to slavery and the
compromise of the delegates of the Constitutional Convention around the issue of slavery
and representation. Therefore, The Three-Fifths Compromise was one of only three
compromises during the Constitutional Convention, but one in which the delegates from
South Carolina seemed to have the most influence.

Slavery, as mentioned above, was the key to economic growth in the South and
the United States as a whole. The labor of enslaved Africans allowed the United States’
economic system to prosper. Thus, many felt that the institution of slavery had to be
protected for economic reasons. Others felt that slavery could be eliminated; however,
the elimination of slavery, from the viewpoint of many Northerners, was not based on
morality. In the North, slavery was not regularly utilized, so there was no need for a large
population of enslaved persons. Many Northern states emancipated their slaves because
factory workers, rather than fieldworkers, were needed in the North.

Results of the Great Compromise

The basis of the research lies in the interpretations of the development of the U.S.
Constitution due to the struggles of Southern states like South Carolina, to ensure that
any issues of slavery already being recognized and honored were solved and protected.
Therefore, the interpretation of the American Constitution is shaped by three elements
according to Jeffrey Goldsworthy who declares, "The U.S. Constitution is old; changes

21 Ibid., 270.
in technology, knowledge, the economic order, and society more broadly not infrequently create a need to adapt constitutional arrangements, both those establishing and organizing the government and those protecting rights."\(^{22}\) This study has focused on the issue of the Constitution being difficult to amend, because it calls more for interpretation, instead of amendment, to be done in order to adjust constitutional arrangements that are deemed necessary. The American Constitution is very "vague, open-textured, sometimes ambiguous, and in general is in desperate need of elaboration."\(^{23}\) It can be argued that this ambiguousness was not an accident, but rather shows the thought put forth by the founders when creating the document. South Carolina influenced the U.S. Constitution through her racist attitudes towards black slaves because of the need for racial slavery. Therefore, the goal is to read the document from an Afro-centered point of view in order to relate the influence of South Carolina’s laws based on race to those elements of the Constitution dealing with the same issues. Therefore, reading the document with its affects on black America in relation to laws and policies.

The United States' government is defined and regulated by the American Constitution. The language of the Constitution was heavily influenced by the Southern interest in maintaining the institution of slavery. South Carolina, representing all the Southern colonies, worked to ensure that the means to their economic prosperity and political power--slavery--would be legitimizied. The document that emerged in the 1787 Constitutional Convention protected that institution of slavery.


During colonial America, systemic demands were common. For the most part, organized interest groups, in the form of slave rebellions, brought on these systemic demands. Non-systemic demands were often a result of social movements in the North, looking to end the institution of slavery. The American Constitution, through compromises made during the Constitutional Convention, became a viable force for the stability needed for the system of slavery to survive. Figure 2 shows the result of the compromises of the Convention. The first being the need for a stronger central government due to the issues found in the Articles of Confederation (i.e. lack of a central government to maintain cooperation between all the states). The Articles of Confederation allowed for disturbance (i.e. slave rebellions and economic division between the states) that risk the stability needs to form a working Constitution. Furthermore, this disturbance were already solved through Colonial South Carolina Law, and as a result was used in the U.S. Constitution to fix the same issues for the country as a whole by allowing all states to work under one law and system of democracy.
Stress
- Articles of Confederation
- Problems
- How it did not work

Disturbances
- Slave Rebellions
- Runaway Slaves
- Economic Division

Persistance
- South Carolina Law
- Issues with Rebellions and Runaways
- Economics

Maintenance
- The U. S. Constitution

Figure 2: The Easton Model and the U.S. Constitution
The word ‘slavery’ only appears in the Thirteenth Amendment, which was written well after the Convention of 1787. However, the Constitution has references such as “other person,” “such persons,” or “person held to Service or Labour” that appear to be directly related to views the colonists held regarding enslaved Africans. The first reference is found in Article I, Section 9, and Paragraph 1. It states,

The Migration or Importation of Such Persons as any of the States not existing shall think proper to admit, shall not be prohibited by Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such importation, not exceeding ten dollars for each Person. This section does not make direct mention of African slaves, but refers to them as “such persons.” This Article then perpetuated the importation of slavery until 1808 without any interference from the federal government. Article I, Section 9, and Paragraph 4 discusses how taxes would be monitored. It states that “no Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.” Therefore, any tax on slaves would have to take into account the Three-Fifths Clause. This ensured that slaves would be taxed at only three-fifths the rate of their white masters.

With the importation of slave labor protected for another 21 years and the tax issues settled, the next issue was that of runaways. The colony of South Carolina had firsthand experience with this issue. Many of South Carolina’s slaves attempted to run to the free states in the North. Others escaped through Georgia to Spanish Florida. Article IV, Section 2, and Paragraph 3 states,

24 U.S. Constitution, art. 1, sec. 9, cl. 1.

25 U.S. Constitution, art. 1, sec. 9, cl. 4.
No person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.\(^{26}\)

This article prohibited any state from emancipating a fugitive slave. It required that all runaways be returned to their owner and home state. Article V also refers to the slave trade when it states,

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which in either Case, shall be valid to all Intents and Purposes, as part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.\(^{27}\)

Therefore, the powers of Congress in relation to the states were once again affirmed and powers to end the slave trade were limited by the language of the above-mentioned Article. These provisions of the Constitution gave the South only a partial victory. Although it granted protection of slavery, it did allow South Carolina to gain political strength in the Electoral College and House of Representatives.

Other portions of the Constitution dealt with issues South Carolina found to be important, such as insurrections. Article I, Section 8, and Paragraph 15 states that it was within the power of the Legislative Branch (Congress) “to provide for calling forth the

\(^{26}\) U.S. Constitution, art. 5, sec. 2, cl. 3.

\(^{27}\) U. S. Constitution, art. 5.
Militia to execute the Laws of the Union, suppress insurrections and repel Invasions.\textsuperscript{28} This clause is commonly known as the Domestic Insurrections Clause, which allowed Congress to call upon federal forces to suppress slave rebellions in times of need. This issue was mentioned again in Article 4, Section 4, which states, "the United States shall guarantee to every state in the Union a Republican form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive, against domestic Violence."\textsuperscript{29} This statement was a promise to the Southern states that in the case of an insurrection, the Federal Government (the Legislative or the Executive branch) has it in their power to protect the people of the states from any rebellions that might occur.

Article I, Section 8, and Clause 17 resolved another issue of the Convention: Would the nation's capital be a free or slave territory? The solution was to give the Legislative branch the power to,

Exercise exclusive Legislation in all Cases whatsoever, over such District as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature . . . \textsuperscript{30}

This allowed Congress to regulate all institutions, including slavery, inside the nation's capital. Under this provision, slavery was allowed in Washington, D.C., laying to rest the fears of many Southern states, including South Carolina, around the issue of whether the nation's capital would be part of the North or South by effectively making it a separate

\textsuperscript{28} U.S. Constitution, art. 1, sec. 8, cl. 15.

\textsuperscript{29} U.S. Constitution, art. 4, sec. 4.

\textsuperscript{30} U.S. Constitution, art. 1, sec. 8, cl. 17.
District rather than part of a state. The power of Congress to regulate taxes on products, including slave labor, is also discussed in Article 1, Section 9, and Clause 5. It states, "No tax or duty shall be laid on Articles exported from any state," thus preventing Congress from taxing any goods, like rice or slave labor, and allowing the Southern states to retain much of their economic power, while allowing the north to benefit monetarily.

One of the last, but most important results of the compromises achieved by the Southern states was the formation of the Electoral College and its power to elect the nation's President. Article 2, Section 1, and Clause 2 states,

> Each state shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress...\(^{31}\)

Without specifically stating it, the people's vote would not be the deciding factor in a presidential race. This Article provided for the indirect selection of the President by the state representatives, based on representation in the Congress. Furthermore, by incorporating the Three-Fifths Clause, it allowed the Electoral College to give slave states greater influence during the election process.

In the end, the U.S. Constitution created a government of limited powers when it came to the issue of slavery. With some exceptions in clauses that allowed Congress to regulate commerce, the Southern states seemed to obtain everything they legally wanted included in the Constitution. Northern states opposed slavery because it would give the South a political advantage, but they returned home arguing that the Constitution did not recognize slavery as a legal identity due to the wording of the document. It could be

\(^{31}\) U.S. Constitution, art. 2, sec. 1, cl. 2.
argued that they were correct in their comfort, but the Southern delegates like General Charles Cotesworth Pinckney could also return home in confidence, knowing that with the fugitive slave law being included in the Constitution, they no longer had to worry about any runaway issue without the help of the Federal Government. The Three-Fifths Clause gave the South political power in Congress, while the Electoral College allowed them the power of selection of the President. Congress had no power to tax any goods or products in the South, and the slave trade clause ensured the trade for a minimum of another 20 years. Kenneth Bowling sums up the result of these compromises when he states,

Madison and Hamilton, with the backing of Thomas Jefferson and George Washington, struck a compromise by which the North secured Southern acquiescence to both financial capitalism and the constitutional doctrine of implied powers... along with it came the strong implication that the North would not raise serious objection to the institution of slavery...32

Therefore, as long as the Southern states remained in the Union, they had the protection of a whole country in time of need. The effects of these compromises would last for centuries, until the 1954 Supreme Court decision that started to change the racial landscape of America into the 21st century by breaking the color barrier in education.

Ultimately, the reason that the Constitution has remained unchanged for so long can be found within the Supremacy Clause; the common name given to Article 6, Paragraph 2 of the U.S. Constitution. It reads,

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This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the authority of the United States, shall be the supreme Law of the land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.\(^{33}\)

This clause establishes the Constitution as the Supreme law of the land. This law was to be adhered to by all the states of the Union. The Constitution is, then, the highest form of law within the American federal system. State and Federal judges are required to uphold this law, even in cases where state laws or constitutions conflict with it.

Under the Supremacy Clause, everyone must follow the Constitution, regardless of the incident. This clause is meant to ensure that the states cannot do as they will, potentially jeopardizing the status of the structure of government created by the Constitution. An example of this is the Dred Scott decision. In this decision, Mr. Scott appealed to the Supreme Court that he was freed from slavery due to his move to a free state. The state courts were unable to settle the dispute. The Supreme Court made a ruling based solely on the language of the U.S. Constitution. As the interpreter of the Constitution, the U.S. Supreme Court is charged with settling all disputes, and its decisions are deemed the final word. The Chief Justice found that during the time of the inception of the Constitution, Dred Scott was not recognized as a citizen and thus had no right of appeal. It was determined that anyone not deemed a citizen at the inception of the Constitution could not be a citizen of the United States. As a result, states began to deny blacks citizenship. This denial of citizenship rights continued for another one hundred years, until Brown v. Board of Education. In this case, the court took a different stance.

\(^{33}\) U.S. Constitution, art. 6, cl. 2.
than in the Dred Scott decision. *Brown v. Board of Education* showed that blacks were equal citizens in the United States and deserved the same rights as all citizens, regardless of skin color.

The Supremacy Clause seems to have ensured that the federal structure remained uniform at both the federal and the state levels. Without the Supremacy Clause, many states would be free to pass legislation that conflicted with federal laws. As the supreme law of the land, the U.S. Constitution acts as a guideline for all local legislation. Thus, the Supreme Court has the power to determine if an issue is constitutional or not.

**Analysis**

Over the course of this research several key themes were developed. They were location, the Constitution, the delegates, Southern thought towards slavery, economic rationale for slavery, and legislation dealing with slavery. These themes then allowed the picture to be painted and explained how colonial South Carolina influenced the American Constitution into a racist document.

Location was a key factor to consider while analyzing the background of the U.S. Constitution, especially the difference between the Northern states and the Southern states. As previously stated, the Southern states were much more reliant on raw goods cultivated by slave labor. Meanwhile, the North was much more industrial; however, it was also dependent on slave-produced raw goods to be processed in the Northern factories. Regardless of location, this need for service was rampant across the country. The Easton Model helps explain how location played a major factor in the development of the United States government. Figure 3 shows how the U.S. government responds to Stressors or Disturbances through forms of Persistence and Maintenance created by the
U.S. Constitution (Figure 3). The figure shows the connection between the U.S. Government, which is created and maintained through the U.S. Constitution, and how it deals with any stress and disturbance they may develop. One example of a stressor would be a rebellion. A rebellion would be handled by the Constitution by allowing Congress to send in force to stop the rebellion from as many states needed. This will then create a sense of stability in the overall government of the United States. Therefore, the U.S. Government deals with all stress or disturbance through the laws created and protected by the Constitution. This then creates a form of maintenance or persistence to deal with the initial stress or disturbance. As a result, the U.S. Government then enjoys stability.

Figure 3: The Easton Model Outcomes
The U.S. Constitution has been viewed in many different ways. Charles Beard believed that that "Delegates had their own interests and they made the constitution based on that." These interests were very dependent on location. In the North, in particular, "in 1652... the Massachusetts General Court ordered that Scotsmen, Indians, and Negroes should train with the English in the militia, but four years later abruptly excluded Negroes..." This shows that in the North, for a short time blacks were used in many ways other than in the form of labor. However, in regions of the South, "rice became so critical... some traders, realizing the marketing advantage, claimed to be able to supply Africans from what was advertised as the 'Rice Coast' in return for premium prices," showed that in the South slave labor was of the most importance for economic gains and goods, all of which were pushed from the colonies through the voices of the delegates.

All these factors, such as, location, the Constitution, the delegates, thought towards slavery, and the economic rationale for slavery were facilitated through legislation. Colonial South Carolina was the first colony to pass a comprehensive slave code. Shortly afterward, other British colonies followed the example set by South Carolina and passed legislation to help maintain and structure the system of slavery. All of these elements are then displayed in the U.S. Constitution.

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34 William Boone, "Theories of U.S. Constitution origin," lecture delivered to PSC 548, September 10, 2007, Clark Atlanta University, Atlanta, GA.


36 James Oliver Horton and Lois E. Horton, Slavery and the Making of America (New York: Oxford University, 2005), 33.
CHAPTER V
CONCLUSION

The purpose of this research was to investigate whether or not the colonial statutes of South Carolina, created between 1600 and 1787, helped to shape the American Constitution regarding race and the institution of slavery. The colonists in all the British colonies (South Carolina included) passed a series of laws that helped maintain the structure of slavery and gave them control over their slave labor. However, colonial South Carolina statutes, more than other colonies, were developed to maintain slavery. These statutes were later supported by the American legal system. South Carolina’s political influence was the result of the American colonies’ dependence on slavery for profitable gains. Support for the slave trade was embedded in the American Constitution, allowing slavery to continue after the 1787 Constitutional Convention.

The original question that guided this research was what impact did the South Carolina statutes have on the writing of the American Constitution, especially in relation to race and the institutionalization of slavery? This question was answered and becomes relevant to the field of Black Studies because this study shows that racial thoughts and economic gains led to the United States being built upon racist ideals which were protected through law. South Carolina, due to its large slave population, understood that law was the way to control not only the slaves, but also the interest of the country. Furthermore, slavery created wealth through the products it produced and political
power for the South through representation in the government. The Constitution limited the rights of African slaves. It also allowed the central government to use any means necessary to protect the system of slavery from any challenges that might arise, including the emancipation of the slaves.

Asante’s Location Theory was very important to this research because it considered three things: language, attitude, and direction. Language is important because “it most easily manifests its author’s conceptual incarceration or conceptual liberation.”

Attitude was displayed in the original framers’ perspective, while direction relates to the framers’ visions of the country. In analyzing the American Constitution’s development, each of these factors was equally important, and they were dependent upon each other. The writers of the Constitution understood that the language of the document would be important. Although there is no specific reference to slavery, there are inferences made throughout the document. The racially charged environments towards blacks during the late 1700s were displayed in the attitudes of the delegates at the Convention, which allowed them to agree on the issue regardless of who owned slaves. Both North and South understood that if the country were moving toward complete independence, slavery would be the system to bring the necessary economic stability.

Location is critical in the study of the American Constitution, because delegates represented two very different areas. Many of the Northern colonies such as New York ended slavery before the Convention in 1785. Many Northerners, especially politicians, believed slavery was a Southern problem. With Northern industrialization, slavery would

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ultimately end. For Northern textile manufacturers, Southern slavery was important because they needed cotton for their mills. As a result, many Northerners argued that Southern slavery was the best way to produce this raw resource, and therefore was a system that should be protected. Others argued that the South produced other raw goods such as rice, which was grown in South Carolina, and was vital to the Northern economy. For the South to end slavery would mean the end of their economic structure.

Consequently, for the South to join the Union, compromises were necessary between the Northern and Southern colonies.

For example, Thurgood Marshall, the first African-American Supreme Court Justice, contemplated issues related to the original intent of the Constitution in his 1987 speech “The Constitution: A Living Document.” In this speech, he discusses the results of the compromises during that summer of 1787 and how they affected the future of America. Marshall states,

I cannot accept this invitation, for I do not believe that the meaning of the Constitution was forever “fixed” at the Philadelphia Convention. Nor do I find the wisdom, foresight, and sense of justice exhibited by the Framers particularly profound. To the contrary, the government they devised was defective from the start, requiring several amendments, a civil war, and momentous social transformation to attain the system of constitutional government, and its respect for the individual freedoms and human rights, we hold fundamental today.²

Justice Marshall’s analysis of the Constitution seems accurate. Analysis of the events surrounding the drafting of the Constitution suggests that the colonies had many issues with their slave labor. Therefore, with the development of a new government, many felt that the new government must also create not only protection of slavery, but also deal

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with the issues found in the colonies prior to its inception. The Constitution was drafted and agreed upon after a series of compromises and deals between the delegates. The primary purpose seems to have been to protect personal interests. Even after the Civil War, the issues surrounding race remained unsolved. The reason that it took more than one hundred years for some resolution around the issues of slavery can best be summarized thusly: "The Southern states acceded to the demands of the New England states for giving Congress broad power to regulate commerce, in exchange for the right to continue the slave trade. The perpetuation of slavery ensured the primary source of wealth in the southern states."3

Furthermore, as Justice Marshall explains, the compromises between both the Northern colonies and the Southern colonies were very profound along the lines of slavery for economic concerns. Despite this clear understanding of the role slavery would play in the new republic, use of the words "Slaves" and "Slavery" were carefully avoided in the original document . . . 4 This allowed the Constitution to solve one of the major problems emerging the war—how would slaves be viewed and how would they be included within the framework of the Constitution. South Carolina served as an example of how laws could be used to control slave labor and maintain Southern economic dominance.

This study is significant because it shows that the reason black America is still fighting for equal representation is founded in the original intent of the U.S. Constitution. Furthermore, understanding that black struggles are not new, but rather part of the social

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3 Ibid.

4 Ibid.
fabric of the U.S., will allow scholars in the field of Black Studies not only to study conceptual themes like the family or church, but also legal topics such as this research. Unlike many topics of research in the field of Black Studies, this one offers new perspectives on a very old topic. The Afrocentric point of view in analyzing the elements that helped create the Constitution is not only valuable, but also necessary for the forward movement of blacks in the United States during the twenty-first century and beyond.
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