

AMERICAN CONSTITUTIONALISM
VOLUME II: RIGHTS AND LIBERTIES
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Supplementary Material

Chapter 5: The Jacksonian Era – Individual Rights/Guns/Persons of Color and the Right to Bear Arms

Joel Tiffany, *A Treatise on the Unconstitutionality of American Slavery* (1849)¹

Joel Tiffany was the reporter for the New York Supreme Court. He was one of several writers who developed an anti-slavery interpretation of the Constitution of the United States. Tiffany's anti-slavery constitutionalism asserted that all persons of color in the United States were citizens entitled to the ordinary rights of citizens.

The right to bear arms was one of the most important rights of a citizen. Tiffany maintained this right included a right to militia service and "the right of self-defense." Why did Tiffany assert a right to self-defense? Can you connect the principles in the excerpt below to more general themes in American anti-slavery constitutionalism? Many anti-slavery advocates who defended the right to bear arms before the Civil War played significant roles drafting the post-Civil War Amendments. Should contemporary Americans consider the excerpt below when determining whether the Fourteenth Amendment protects the right to bear arms?

...
Here is another of the immunities of a citizen of the United States, which is guaranteed by the supreme, organic law of the land. This is one of the subordinate rights, mentioned by Blackstone, as belonging to every Englishman. It is called "*subordinate*" in reference to the great, absolute rights of man; and is accorded to every subject for the purpose of *protecting and defending himself*, if need be, in the enjoyment of his absolute rights in life, liberty and property. And this guaranty is to all without any exception; for there is none, either expressed or implied. . . . It is hardly necessary to remark that this guaranty is absolutely inconsistent with permitting a portion of our citizens to be enslaved. The colored citizen, under our constitution, has now as full and perfect right to keep and bear arms as any other; and no State law, or State regulation has authority to deprive him of that right.

But there is another thing implied in this guaranty; and that is *the right of self defense*. For the right to keep and bear arms also implies the right to use them if necessary in self defense; without this right to us the guaranty would have hardly been worth the paper it consumed.

...
... The constitution was framed, and all the guaranties for freedom, made as though there were none but freemen in the country; and nothing but this tacit understanding, that slavery should be abolished at the earliest practical day caused it to survive that period. And it was this understanding and expectation that restrained the full and speedy operation of those guaranties for freedom. But that understanding has been violated, and those expectations have most signally failed. . . . Instead of confining slavery to its then limits, and abolishing it with all convenient dispatch, they have extended it over territories as large as the original thirteen states. . . . [T]here is now no alternative left, but to stand by the guaranties of the National Constitution, and extend the blessings of liberty to *all* within the United States.

¹ Excerpt taken from Joel Tiffany, *A Treatise on the Unconstitutionality of American Slavery* (Cleveland, OH: J. Calyer, 1849).