

AMERICAN CONSTITUTIONALISM
VOLUME II: RIGHTS AND LIBERTIES
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Supplementary Material

Chapter 5: The Jacksonian Era – Equality/Race/Free Blacks/Rights

Kansas Debates the Rights of Free Persons of Color (1859)¹

The debates that took place during the Kansas Constitutional Convention of 1859 illustrate the range of northern opinion on the status of free persons of color. No member of the convention sought to establish slavery in Kansas. Most Democrats were nevertheless committed to white supremacy. Many Republicans championed a racially egalitarian Kansas. The Kansas framers eventually compromised. Proponents of racial equality defeated proposals to prohibit free blacks from entering the state or attending public schools with white children. The constitution of Kansas did, however, restrict voting, office-holding, and militia service to white persons.

*Midwestern state constitutions contained numerous provisions hostile to free blacks. The constitution of Indiana, adopted in 1851, forbade blacks from entering the state and prohibited them from making contracts. In 1856, the Supreme Court of Indiana voided the marriage of two persons of color because the woman moved from Ohio to Indiana after the Indiana Constitution was adopted. The crucial passages of *Barkshire v. State* asserted,*

The policy of the state is . . . to exclude any further ingress of negroes, and to remove those already among us as speedily as possible. . . .

Marriage, in this state, is but a civil contract. As such it is clearly embraced in the constitutional provision, copied into the subsequent law, which declares all contracts made with negroes and mulattoes coming into the state contrary to the provisions of the 13th article, void. The consequences are not a legitimate consideration for the Courts. A constitutional policy so decisively adopted, and so clearly conducive to the separation and ultimate good of both races, should be rigidly enforced.

When reading the debates in the Kansas Convention, notice how partisan considerations intermingle with racial considerations. How do Democrats and Republicans maneuver for advantage in the constitutional convention? To what extent are proposals sincere expressions of Democratic and Republican beliefs about race? Imagine yourself a member of this convention. What is the most racially egalitarian constitution you believe possible? How, using the constitutional language of the Jacksonian Era, would you persuade others to adopt that egalitarian constitution?

WILLIAM C. MCDOWELL (Leavenworth)

Ist. No Negro or Mulatto shall come into or settle in the State after the adoption of this Constitution.

2d. All contracts made with any negro or mulatto, coming into the State contrary to the provision of the foregoing section shall be void.

...

SAMUEL STINSON (Leavenworth)

¹ Excerpt taken from *Kansas Constitutional Convention* (Topeka, KS: Imri Zumwalt, 1920).

Mr. President, I move to add to the section the following words: "but no negro or mulatto pupils shall be admitted to such schools."

...

W.R. GRIFFITH (Marmaton)

Mr. President, I desire the Legislature to be left to pass such laws upon this subject as they shall deem necessary. I hope gentlemen will not say that our Constitution shall discriminate upon the difference between persons. If we incorporate provisions that shall exclude any class, the time may not be far distant when we may wish we had not done so. . . .

...

T.T. BURRIS (Olathe)

It is an old maxim that beggars should not be choosers. We are talking about a fund that may be given us by the general government. What claim has one class of men to the common benefits of this country above that of each and all classes? If any gentleman can point out any view or precedent that can be recognized in law or justice, we will yield the point. We must proceed upon the supposition that the blacks are to live in common with the whites. It is supposed that they are to mingle and live together with us. I ask if it is desirable to see that class of citizens growing up in entire ignorance? If they are to live in the Territory they should be made as intelligent and as moral as education can make them. . . .

SAMUEL A. KINGMAN (Hiawatha)

. . . I will let my children associate neither with those of the gentleman from Leavenworth nor with those of the gentleman from Africa. If he is so fearful that his children will be contaminated, let him provide for them as I do for mine. . . . I intend to face the music fairly before my constituents, and they are not particularly a negro-loving race of people—some of them are not very strong negro haters, and I am one of that class. I deny all prejudice against the race. If I could not rise above such a feeling—could not protect myself against a few negroes, without provisions of law heaped and crowded into every page of the Statutes—if I could not hold my position socially and politically without such constitutional restrictions, I would just leave Kansas and go where majorities rule. I have no hesitancy in saying that if ever a negro family should come into my neighborhood, I should immediately object to their attending school with the children of my neighbors—and I believe that neighborhood could protect itself. . . .

J.G. BLUNT (Walker)

. . . I am . . . opposed to incorporating in this Constitution a provision which shall prohibit the education of negroes if they so prefer. Society will regulate itself. We don't know what will be the peculiar views of the people of Kansas upon this subject before there will be a change of the organic law. There may be a progress made by which the prejudices which involve and surround this question of the admission of negroes or mulattoes to our common schools may be laid aside; and then the Legislature could provide for the education of persons of color. . . .

S.T. SLOUGH (Leavenworth)

. . . I shall never consent, by my vote, or by any action of mine, that those upon whom Nature's God has stamped inferiority, shall ever associate with my children in our common schools, which I hope to assist in supporting. . . . I am opposed to the introduction of mixed races in our common schools; and if we authorize it I believe the result will be that the people will repudiate the Constitution which is to be the result of our labors here. . . .

MCDOWELL

...
... Geographically we are situated upon the margin of the slave states, that are gradually emancipating their slaves, and, very naturally, this Territory becomes the receptacle of their free negroes. Now, I propose to make this not only a free State, but a free white State. . . . We stand upon the record as believing that God Almighty, for some high purpose, has established this inferiority of the black race, and stamped an indelible mark upon them. Between the two races there is an unfathomable gulf that cannot be bridged. If there are communities who believe they are no better, we submit them to their tender mercies. We believe the two races can never become homogeneous. All propositions of social equality only tend to complicate this question, and hang round it questions that tend to produce excitement; and we propose to cut it off now, at once and forever. . . . The black race should not be allowed to live in this Territory, as we do not propose to have slavery in the new State of Kansas. . . .

S.O. THACHER (Lawrence)

...
The scheme of making Kansas a slave State is abandoned by the Democracy. But, with the true blood-thirstiness of slave-hounds, that party seeks to wreak the chagrin and mortification of its signal defeat upon the poor, helpless and unprotected race it sought to chattelize and imbrute. . . . No longer able to bind fetters upon the limb of the slave—no longer able to scourge and flay his back, they now seek to subject him to cruel distinctions and abhorred impositions, and thereby gratify the malice and cruelty which the system of human bondage ever inspires.

And yet this is the party that prates to us about the immutable principles of justice and innocence! This is the party that brushes aside reason, justice and truth, to howl at their opponents “fanaticism!” . . . There is no fanaticism so brutalizing, so dehumanizing in all its features and characteristics, as the fanaticism of oppression. . . .

...
Negro equality! There are men among you who shriek this cry, who first saw the light in the arms of a negro nurse, and from her breast drew the milk of infancy. Let such men never raise a babble so insane and so reflective upon their own history!

What is the proposition gentlemen submit to us? It is to insert in our Constitution a dark and forbidding feature, utterly opposed and repugnant to true Republicanism. They tell us, by implication, that unless the Constitution of a free and glorious State mar its beauty with a provision protecting the children of these gentlemen, they will mingle with and become the companions of negro children. Well, sir, I suppose these gentlemen, on the principle that “birds of a feather flock together,” may feel the necessity of this provision, but I do insist that the same necessity does not prevail everywhere. I believe the great majority of the children of this country do not need any such barrier of law to separate them socially from those of a crushed race. It is hard to see or understand why one thousand white children need a provision of law to keep them from mingling with ten colored children. Though I am not disposed to deny that Democrats may feel the want of such a safeguard, I submit that the children of the vast majority of the people are not so negro tending or affiliating.

...
S.D. HOUSTON (Manhattan)

...
I intended to move to insert the word “separate” before the word “education”; and I will give my views. I am not legislating for the counties of Riley, Shawnee or Leavenworth, but for Kansas; and it is my opinion that the people are unwilling to have their children educated with the blacks. For that reason I would be willing to forego my position when we come to vote on the word “white.” I wish them to have a portion of the school fund, but insist that they have separate schools. . . .

J. LAMB (Mound City)

. . . . I am in favor of referring this matter, whether the black man shall have the privilege of coming into Kansas, to a direct vote of the people. I stand upon the popular sovereignty question in relation to their children having a chance of getting an education. If they come into Kansas at all, let us give them an education. The very doctrine of trying to prevent them from having the advantages of common schools makes them an inferior race. . . .

HOUSTON

[He] submitted the following by way of substitute for the first section: "All men are created free and independent, and are endowed with certain inalienable rights, among which are life, liberty and the acquisition and possession of property, and the right to our own persons. These rights exist prior to law."

THACHER

[He] moved to insert, after the words "all men are created free and equal," these words: "except negroes and mulattoes."² . . . My point is the inhumanity of the proposition. I wish to bring it before the body in all its naked deformity.

J.P. GREER (Topeka)

. . . I shall vote against the proposition of the gentleman from Douglas [Thacher], not because I do not think the negroes and mulattoes are not free and equal, but because it does not follow, that because they are free and equal, therefore the white man shall hug them to his bosom, or that white people shall be thereby compelled to admit them to all the social and political privileges of civil government. Sir, while I am unwilling to say, that the negro or mulatto is an inferior being, in any particular, I am equally unwilling to see the society to which I belong claiming the right of indiscriminate association between white people and negroes. I am bound to so represent my constituents in this Convention, as, if possible, to keep the two races distinct, not only in blood, but also in political and social privileges. . . . Therefore, I am opposed to giving the negro and mulatto either the political privileges which we claim for ourselves, or the social privileges to which every member of the State ought to be entitled.

. . .

J.M. ARTHUR (Centerville)

Mr. President, I offer the following substitute: "All white male citizens of the United States who have attained the age of twenty-one years, and have been residents of this State for six months, and of the county for thirty days, and of the precinct or ward in which he offers to vote for ten days immediately preceding any general election, shall have the right to vote, and none others."

. . .

JOHN RITCHIE (Topeka)

Mr. Chairman, I hope this motion will not prevail. My opposition to it is on account of its arbitrary bearing upon humanity. I have seen in the disposition of questions involving human liberty here, a disposition to ignore humanity. I am in belief that it is not on account of my color that I am entitled to be here to-day. I believe there is no principle—I believe there is rather a principle which is

² Mr. Thacher was a Republican attempting to embarrass Democrats.

common to us all—that this right should be passed upon. I would hardly claim it for myself on account of superior intelligence, yet rather would I represent the elective franchise upon this principle than upon the word “white.” . . .

W. HUTCHINSON (Lawrence)

Mr. President, I move to strike out the word “white.” . . . By this section we are about to declare that the privilege of exercising that right shall belong to a class, without any respect or regard to merit, cultivation or anything except color. I am too much of a Democrat to believe in such a doctrine. I believe this principle is contrary to the Democratic creed. If the operation of the elective franchise is beneficial—if you and I are made better by being allowed the right to vote—then we should extend that benefit to every class of men. We ought not to say one class should be made less intelligent than we. No, sir. But why do we pretend to do it? We have the laws, the strength, the government. By that same rule every member on this floor might be disfranchised within twelve months. Any race that could get possession of the right to legislate, could as properly disfranchise the white man as we can a black man. We are not here to make a Constitution for one class—for class legislation—but to make a Constitution for the whole people of the State of Kansas, and if we, in that act, disfranchise any particular sect, the responsibility is ours. We have no right to erect separate standards as to the right of the elective franchise. No right to say that a person who has eyes of a particular color, or wears clothes of a particular color, shall exercise the privilege of the ballot-box. There might be some plausibility in an amendment that a person should have a certain degree of intelligence to become privileged to exercise the right. We must go back to the work of this morning, and revise and change our declaration of rights. It declares all men are equally free and independent, and possessed by nature of certain inalienable rights. We declared that this morning, and this afternoon we propose to stultify ourselves, and say that Chinese or blacks who happen to come here shall be disfranchised and deprived of the rights of freemen. I believe that it is not in accordance with that spirit of liberty which is now advancing before the world for us to insert a provision of that kind. . . .

MCDOWELL

Mr. President, I desire to offer the following as section 2d: “Sec. 2. No negro or mulatto shall be entitled to vote at any election.” I offer that because in a clause in the Ohio Constitution somewhat similar to the first section, where the word “white” has been used, the courts have decided any person as white who has a preponderance of white blood; and thereby a great many mulattoes have been allowed to vote. As it requires a great deal of time and takes a good deal of trouble, and as it is attended with considerable difficulty to determine this question, I desire to have no misunderstanding. I start out with the proposition, that if I can, I will, succeed in having such a clause in the Constitution of Kansas. I came here instructed to oppose negro suffrage and negro equality—to advocate the enactment of a clause in the Constitution prohibiting negroes from emigrating to the State of Kansas, and, by whatever legislation; to discourage the negroes that are here from remaining. . . .

The Constitution of Kansas (1859)

Bill of Rights, Sec. 6: There shall be no slavery in this State.

Article II, The Legislature, Sec. 4: No person shall be a member of the Legislature who is not at the time of his election a qualified voter of . . . the county or district for which he is elected.

Article V; Suffrage, Sec. 1. Every white male person of twenty-one years and upwards belonging to either of the following classes—who shall have resided in Kansas six months next preceding any election, and in the township or ward in which he offers to vote, at least thirty days next preceding such election shall be deemed a qualified elector.

Article VIII; Militia, Sec. 1: The militia shall be composed of all able-bodied white male citizens between the ages of twenty-one and forty-five years. . . .



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