

AMERICAN CONSTITUTIONALISM  
VOLUME II: RIGHTS AND LIBERTIES  
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Supplementary Material

Chapter 6: The Civil War and Reconstruction—Equality/Race

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**The Senate Debates Asians (and Gypsies) (1866)<sup>1</sup>**

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*Americans during Reconstruction debated who was suited for American citizenship and the scope of proposed constitutional bans on racial discrimination. Most, but not all, of this debate was over the rights of African-Americans. Discrimination against Asian immigrants was rampant on the West Coast. Many prominent citizens feared members of other ethnic groups were not suited for American citizenship. During a debate over Native American citizenship, Senator Edgar Cowan gave a speech suggesting that Congress include language in the proposed Fourteenth Amendment giving states more power to limit citizenship on racial and ethnic grounds. Senator John Conness vigorously attacked Senator Cowan's proposition. The matter was dropped.*

*Senator Cowan in his speech before the Senate insists that people of different races and religions cannot share the same civic space. How does Senator Conness challenge that proposition? How, if at all, might Senator Conness's speech influence your understanding of the meaning of citizenship in the Fourteenth Amendment?*

SENATOR EDGAR COWAN (Republican, Pennsylvania)

... I have supposed further, that it was essential to the existence of society itself, and particularly essential to the existence of a free State, that it should have the power, not only of declaring who should exercise political power within its boundaries, but that if it were overrun by another and a different race, it would have the right to absolutely expel them. I do not know that there is any danger to many of the States in this Union; but is it proposed that the people of California are to remain quiescent while they are overrun by a flood of immigration of the Mongol race? Are they to be immigrated out of house and home by the Chinese? I should think not. It is not supposed that the people of California, in a broad and general sense, have any higher rights than the people of China; but they are in possession of the country of California, and if another people of a different race, of different religion, of different manners, of different traditions, different tastes and sympathies are to come there and have the free right to locate there and settle among them, and if they have an opportunity of pouring in such an immigration as in a short time will double or treble the population of California, I ask, are the people of California powerless to protect themselves? I do not know that the contingency will ever happen, but it may be well to consider it while we are on this point.

... Why, sir, there are nations of a people with whom theft is a virtue and falsehood a merit. There are people to whom polygamy is as natural as monogamy is with us. It is utterly impossible that these people can meet together and enjoy their several rights and privileges which they suppose to be natural in the same society; and it is necessary, a part of the nature of things, that society shall be more or less exclusive. It is utterly and totally impossible to mingle all the various families of men, from the lowest form of the Hottentot up to the highest Caucasian, in the same society.

It must be evident to every man intrusted with the power and duty of legislation, and qualified to exercise it in a wise and temperate manner, that these things cannot be; and in my judgment there should be some limitation, some definition to this term "citizen of the United States." ...

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<sup>1</sup> *Congressional Globe*, 39th Cong. 1st Sess. (1966), 2890–92.

Sir, I trust I am as liberal as anybody toward the rights of all people, but I am unwilling on the part of my State, to give up the right that she claims, and that she may exercise, and exercise before very long, of expelling a certain number of people who invade her borders; who owe to her no allegiance; who pretend to owe none; who recognize no authority in her government; who have a distinct, independent government of their own—an *imperium in imperio*; who pay no taxes; who never perform military service; who do nothing, in face, which becomes the citizen, and perform none of the duties which devolve upon him, but, on the other hand, have no homes, pretend to own no land, live nowhere, settle as trespassers where ever they go, and whose sole merit is a universal swindle; who delight in it, who boast of it, and whose adroitness and cunning is of such a transcendent character that no skill can serve to correct it or punish it; I mean the Gypsies. They wander in gangs in my State. They follow no ostensible pursuit for a livelihood. They trade horses, tell fortunes, and things disappear mysteriously. . . . These people live in the country and are born in the country. They infest society. They impose upon the simple and the weak everywhere. Are these people, by a constitutional amendment, to be put out of the reach of the State in which they live? . . .

. . . I wish to be understood that I consider these people to have rights just the same as we have, but not rights in connection with our Government. If I desire the exercise of my rights I ought to go to my own people, the people of my blood and lineage, people of the same religion, people of the same beliefs and traditions, and not thrust myself in upon a society of other men entirely different in all these respects from myself. I would not claim that right. Therefore I think, before we assert broadly that everybody who shall be born in the United States shall be taken to be a citizen of the United States, we ought to exclude others besides Indians not taxed, because I look upon Indians not taxed as being much less dangerous to society than I look upon Gypsies. I do not know how my honorable friend from California looks upon Chinese, but I do know how some of his fellow citizens regard them. I have no doubt that now they are useful, and I have no doubt that within proper restraints, allowing that State and the other Pacific States to manage them as they may see fit, they may be useful; but I would not tie the hands by the Constitution of the United States so as to prevent them hereafter from dealing with them as in their wisdom they see fit.

SENATOR JOHN CONNESS (Republican, California)

. . .  
[W]hy all this talk about Gypsies and Chinese? I have lived in the United States for now many a year, and really I have heard more about Gypsies within the last two or three months than I have heard before in my life. It cannot be because they have increased so much of late. It cannot be because they have been felt to be particularly oppressive in this or that locality. It must be that the Gypsy element is to be added to our political agitation, so that hereafter the negro alone shall not claim our entire attention. Here is a simple declaration that a score or a few score of human beings born in the United States shall be regarded as citizens of the United States, entitled to civil rights, to the right of equal defense, to the right of equal punishment for crime with other citizens; and that such a provision should be deprecated by any person having or claiming to have a high humanity passes all my understanding and comprehension.

Mr. President, let me give an instance here, in this connection, to illustrate the necessity of the civil rights bill in the State of California. . . . By the influence of our "southern brethren," . . . negroes were forbidden to testify in the courts of law of that State, and Mongolians were forbidden to testify in the courts. . . . In 1862 the State Legislature repeated the law as to negroes, but not as to the Chinese. . . . What was the consequence of preserving that statute? . . . The Chinese were robbed with impunity, for if a white man was not present no one could testify against the offender. They were robbed and plundered and murdered, and no matter how many of them were present and saw the perpetration of those acts, punishment could not follow, for they were not allowed to testify. Now, sir, I am very glad indeed that we have determined at length that every human being may relate what he heard and saw in a court of law when it is required of him, and that our jurors are regarded as of sufficient intelligence to put the right value and construction upon what is stated.

... I beg my honorable friend from Pennsylvania to give himself no further trouble on account of the Chinese in California or on the Pacific coast. We are fully aware of the nature of that class of people, and their influence among us, and feel entirely able to take care of them and to provide against any evils that may flow from their presence among us. We are entirely ready to accept the provision proposed in this constitutional amendment, that the children born here of Mongolian parents shall be declared by the Constitution of the United States to be entitled to civil rights and to equal protection before the law with others.



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