

THE QUEST FOR BLACK VOTING RIGHTS IN NEW YORK STATE

By: Bennett Liebman

“That New York is not a slave state like South Carolina is due to climate and not to the superior humanity of the founders.”¹
George Bancroft, *History of the United States*

There is a tendency to oversimplify the battle over black voting rights (and civil rights in general) in nineteenth century America as a struggle between the South and the North, with the North largely in sympathy with increasing the right of suffrage, and the South largely in opposition to expansion of suffrage. This is not an accurate portrayal. States like Connecticut, Pennsylvania, Maryland, and New Jersey (which had previously authorized black voting) abandoned black voting in the nineteenth century by amending their constitutions.² Before the Civil War, only in the

¹ Dixon R. Fox, *The Negro Vote in Old New York*, 32 POL. SCI. Q. 252, 253 (1917) (quoting George Bancroft). Other relevant quotations from historians and observers on the general state of New York State political life in the nineteenth century include, “[t]he decade after 1816 stands out as a period of great confusion, even in a state where confusion is the political norm.” LEE BENSON, *THE CONCEPT OF JACKSONIAN DEMOCRACY: NEW YORK AS A TEST CASE* 4 (1961). “After living a dozen years in New York,’ wrote Oliver Wolcott, a veteran of early nineteenth century political wars, ‘I don’t pretend to comprehend their politics. It is a labyrinth of wheels within wheels.’” BENSON, *supra* note 1, at 3.

² Brainerd Dyer, *One Hundred Years of Negro Suffrage*, 37 PAC. HIST. REV. 1, 1 (1968). See also KIRK H. PORTER, *A HISTORY OF SUFFRAGE IN THE UNITED STATES OF AMERICA* 90 n.1 (1918). In addition, in Pennsylvania the 1837 case of *Hobbs v. Fogg*, 6 Watts 553 (Pa. 1837), had effectively prevented freed Negroes from voting. See also *Crandall v. State*, 10 Conn. 339 (1834). The trial court in *Crandall* found that blacks were not citizens of the United States and therefore not protected by privileges and immunities clauses of the United States Constitution. See *Crandall*, 10 Conn. at 339. The trial court stated:

“To my mind, it would be a perversion of terms, and the well-known rule of construction, to say, that slaves, free blacks, of Indians, were citizens, within the meaning of that term, as used in the constitution. God forbid that I should add to the degradation of this race of men; but I am bound, by my duty, to say, they are not citizens.”

New England states of Maine, Massachusetts, Vermont, Rhode Island, and New Hampshire could blacks vote on the same footing as whites.³ Every state admitted to the Union between 1820 and 1865 prevented black suffrage.⁴ Between 1865 and 1868, referenda on black suffrage were held in two territories and seven states in the North.⁵ They were defeated in seven of the jurisdictions.⁶ They achieved victory in Iowa and on the third attempt in Minnesota. Both Iowa and Minnesota had miniscule black populations.⁷ Disenfranchisement of blacks across the nation was the general rule, not the exception.

In New York, the voters of the State for a period of nearly fifty years firmly resisted the notion of providing black males the same access to the ballot as white males. “The most important of the referenda held in New York in the nineteenth century were the three on the question of whether or not to remove the \$250 property qualification requirement from Negro voters—a qualification which was not imposed on white voters since 1821.”⁸ In the referenda held in 1846, 1860, and 1869, the voters of New York State refused to eliminate the property qualification for black voters.⁹ Only the passage of the Fifteenth Amendment¹⁰ in 1870 would end the legal discrimination against black males voting in New York State.

Id. at 347. The trial court’s decision was reversed on technical grounds by appellate court.

³ Even here there is room for doubt as Kent’s Commentaries suggested that only in Maine did blacks participate equally with whites in voting:

“In most of the United States, there is a distinction, in respect to political privileges between free white persons and free colored persons of African blood; and in no part of the country, except in Maine, do the latter, in point of fact, participate equally with the whites in the exercise of civil and political rights.”

² JAMES KENT, COMMENTARIES ON AMERICAN LAW 318 (O. W. Holmes, Jr. ed., Little, Brown, and Co., 12th ed. 1873).

⁴ Dyer, *supra* note 2.

⁵ *Id.* at 5.

⁶ For example, in Connecticut in 1865 the referendum authorizing black suffrage was defeated by more than 6,000 votes and was defeated in all but one of the counties in the state. See *Negro Suffrage in Connecticut – The Radicals Badly Whipped*, N. Y. HERALD, Oct. 4, 1865 at 4.

⁷ Dyer, *supra* note 2, at 5.

⁸ John L. Stanley, *Majority Tyranny in Tocqueville’s America: The Failure of Negro Suffrage in 1846*, 84 POL. SCI. Q. 412, 413 (1969).

⁹ *Id.*

¹⁰ See 2 DAVID K. WATSON, THE CONSTITUTION OF THE UNITED STATES: ITS HISTORY, APPLICATION AND CONSTRUCTION 1667 (1910).

COLONIAL NEW YORK

New York State did have a long history of discriminating against minorities in extending the voting franchise. In 1701, the colonial legislature passed a law preventing Catholics and Jews from voting.¹¹ Slavery was authorized in the state for 200 years from 1626–1827.¹² Slaves also could not vote, and in New York there were more slaves than in the other areas of the North and New England.¹³ “New York had been the most important slave state in the North, and continued to have more Negroes than any other state in that section.”¹⁴ Many of the slaves were concentrated in Long Island. In the middle of the seventeenth century, over 30% of the residents of Brooklyn were slaves.¹⁵ In addition to the presence of slaves in the downstate area, there were numerous slaves in the Hudson Valley counties of New York State, and Albany County in the mid-eighteenth century had “the largest slave population in the entire province.”¹⁶ In “[t]he mid-eighteenth century, slaves performed at least a third of all physical labor in New York City.”¹⁷ As of 1770, “more slaves were reported living in New York than in Georgia.”¹⁸

¹¹ Act of Oct. 18, 1701, ch. 94, 40–41, 1701 Laws of N.Y.

¹² A. JUDD NORTHRUP, *SLAVERY IN NEW YORK: A HISTORICAL SKETCH* 244 (1900).

¹³ Approximately 22,000 slaves resided in New York at the start of the American Revolution. *Id.* at 286. Slaves constituted 11.5% of the state’s population. With the manumissions act which gradually freed the slaves in New York, the number of slaves was reduced to 10,089 by 1820 with 29,278 free blacks. See 3 CHARLES Z. LINCOLN, *CONSTITUTIONAL HISTORY OF NEW YORK* 177 (1906) [hereinafter 3 LINCOLN, *CONSTITUTIONAL HISTORY*]. See generally ERIC FONER, *GATEWAY TO FREEDOM: THE HIDDEN HISTORY OF THE UNDERGROUND RAILROAD* 30 (2015); See generally DAVID N. GELLMAN, *EMANCIPATING NEW YORK: THE POLITICS OF SLAVERY AND FREEDOM 1777-1827* 16 (2006) [hereinafter GELLMAN, *EMANCIPATING NEW YORK*].

¹⁴ Fox, *supra* note 1, at 255. New York was “the largest slave state north of Maryland.” David N. Gellman, *Race, the Public Sphere, and Abolition in Late Eighteenth-Century New York*, 20 *J. OF THE EARLY REPUBLIC* 607, 608 (Winter 2000) [hereinafter Gellman, *Race, the Public Sphere*]. See also GELLMAN, *EMANCIPATING NEW YORK*, *supra* note 13, at 1 (discussing New York as “the state with the highest concentration and largest number of slaves north of Maryland.”).

¹⁵ GELLMAN, *EMANCIPATING NEW YORK*, *supra* note 13, at 19.

¹⁶ *Id.* at 20. On the 1756 census, see EDGAR J. MCMANUS, *A HISTORY OF NEGRO SLAVERY IN NEW YORK* 198 tbl. (1970) [hereinafter MCMANUS, *HISTORY*]. Act of May 14, 1745, ch. 790, 252, 1745 Laws of N.Y made it a capital offense for slaves from Albany City or Albany County to try to flee to the French at Canada.

¹⁷ Sandra L. Rierson, *The Thirteenth Amendment as a Model for Revolution*, 35 *Vt. L. REV.* 765, 781 (2011).

¹⁸ *Id.*

POST-INDEPENDENCE DEVELOPMENTS IN THE EIGHTEENTH
CENTURY

At the State's first Constitutional Convention in 1777, there was a clear majority of delegates opposed to slavery.¹⁹ The Federalist Party, which was strong in the State, was largely supportive of abolishing slavery.²⁰ Delegate Gouverneur Morris at the Convention advocated the inclusion of language in the Constitution to gradually ban slavery.²¹ His language was, however, watered down and did not become a formal part of the Constitution. Instead, it was included as a preliminary policy statement that "every human being who breathes the air of the state shall enjoy the privileges of a freeman."²² The 1777 Constitution also established property requirements in order to enable all individuals to vote in State elections.²³ The property requirements were tiered so that the property requirements to vote for State senators and for governor were more restrictive than the property requirements to vote for members of the Assembly.²⁴ "The right of suffrage was so restricted that as late as 1790 only 1,303 of the 13,330 male residents of New York City possessed sufficient property to entitle them to vote for governor."²⁵ That property requirement applied to all potential voters, regardless of race. Black people and white people were treated equally in theory.²⁶ Nonetheless, the property qualifications "bore more heavily upon

¹⁹ MCMANUS, HISTORY, *supra* note 16, at 161.

²⁰ *Id.*

²¹ *Id.*

²² *Id.* Nonetheless, only five of the thirty-six delegates failed to support the resolution. See also CHRISTOPHER MALONE, BETWEEN FREEDOM AND BONDAGE: RACE, PARTY, AND VOTING RIGHTS IN THE ANTEBELLUM NORTH 37 (2008).

²³ There was no property requirement in the Constitution for individuals to vote in local elections. 1 CHARLES Z. LINCOLN, CONSTITUTIONAL HISTORY OF NEW YORK 640 (1906) [hereinafter 1 LINCOLN, CONSTITUTIONAL HISTORY].

²⁴ N.Y. CONST. of 1777, art. VII (requiring an Assembly voter to possess "a freehold of the value of twenty pounds, within the said county, or have rented a tenement therein of the yearly value of forty shillings."). Article X required voters for the Senate to be "possessed of freeholds of the value of one hundred pounds, over and above all debts charged thereon." Under Article XVII, a potential voter in a gubernatorial election had to have the same qualifications as a voter in Senate elections. One hundred pounds was the equivalent of \$250, and \$20 pounds was the equivalent of \$50. 1 LINCOLN, CONSTITUTIONAL HISTORY, *supra* note 23.

²⁵ 1 DEALVA STANWOOD ALEXANDER, A POLITICAL HISTORY OF THE STATE OF NEW YORK 15 (1906).

²⁶ Since slaves held no property, they obviously could not vote.

blacks, many of whom were not free men, much less owners of property.”²⁷

With the Federalist Party actively in support of emancipation, there was slow progress in New York towards emancipation. In 1781, the legislature provided that if slaves who served three years in the military or who were regularly discharged would then be freemen.²⁸ The State in 1785 came close to the passage of legislation providing for gradual freedom of slaves. The Assembly passed a gradual-emancipation bill, which would have provided that children born to slave women after 1785 would be free.²⁹ The Assembly bill, however, would have prevented black people from voting, intermarrying, holding public office, or testifying in court against white people.³⁰ The Senate supported gradual abolition but did not wish to impose any civil restrictions on black people. The Senate returned the bill to the Assembly for reconsideration. The two houses eventually agreed to a compromise which provided for gradual abolition while containing only one civil restriction on black people—preventing them from voting.³¹ This bill, however, was vetoed by the Council of Revision,³² which had the power under the first State Constitution to disapprove legislation.³³ The Council found that imposing any qualification on free individuals was not proper. The newly emancipated citizens “are as such entitled to all the privileges of citizens; nor can they be deprived of these essential rights, without shocking those principles of equal

²⁷ PHYLLIS F. FIELD, *THE POLITICS OF RACE IN NEW YORK: THE STRUGGLE FOR BLACK SUFFRAGE IN THE CIVIL WAR ERA* 34 (1982).

²⁸ Act of Mar. 20, 1781, ch. 32, 349, 351, 1780 Laws of N.Y.

²⁹ JIM CROW NEW YORK: A DOCUMENTARY HISTORY OF RACE AND CITIZENSHIP, 1777–1877 30 (David N. Gellman & David Quigley eds., 2003) [hereinafter JIM CROW NEW YORK]. Aaron Burr went further than this and proposed an immediate end to slavery. Burr’s proposal was voted down by a vote of 33–13. *Id.* at 333, n. 20.

³⁰ *Id.* at 30.

³¹ *Id.* at 31.

³² 2 STATE OF NEW YORK, MESSAGES FROM THE GOVERNORS COMPRISING EXECUTIVE COMMUNICATIONS TO THE LEGISLATURE AND OTHER PAPERS RELATING TO LEGISLATION FROM THE ORGANIZATION OF THE FIRST COLONIAL ASSEMBLY IN 1683 TO AND INCLUDING THE YEAR 1906 237 (Charles Z. Lincoln ed., 1909) [hereinafter 2 LINCOLN, GUBERNATORIAL MESSAGES].

³³ Under the State’s first Constitution, a five-member Council of Revision, composed of the governor, chancellor and members of the Supreme Court had the right to veto legislation subject to the veto being overridden by both houses of the legislature. N.Y. Const. of 1777, art. III. *See also* ALFRED B. STREET, *THE COUNCIL OF REVISION OF THE STATE OF NEW YORK; ITS HISTORY, A HISTORY OF THE COURTS WITH WHICH ITS MEMBERS WERE CONNECTED; BIOGRAPHICAL SKETCHES OF ITS MEMBERS; AND ITS VETOES* 268 (1859).

liberty, which every page in that constitution labors to enforce.”³⁴ Additionally, the bill “holds up a doctrine, which is repugnant to the principle on which the United States justify their separation from Great Britain, and either enacts what is wrong, or supposes that those may rightfully be charged with the burdens of government, who have no representative share in imposing them.”³⁵ While the Senate voted to override the veto, the Assembly refused to do so. “In the final analysis, emancipation was blocked by a majority which feared Negro suffrage more than it desired emancipation.”³⁶

In 1788, the State abolished the slave trade in New York.³⁷ Even then, the legislation contained language stating that a current slave “shall continue such, for and during his or her life, unless he or she, shall be manumitted or set free, in the manner prescribed in and by this act, or ill and by some future law of this State.”³⁸

In 1799, the State passed a milestone law gradually ending slavery so that by 1827, there would be no slavery in New York.³⁹ Every child born after July 4, 1799 would be free except that the children (born after July 4, 1799) of a slave would be a servant of their mother’s proprietor.⁴⁰ A male child would be a servant until age 28.⁴¹ A female would be a servant until age 25.⁴² This 1799 law made no attempt to establish further civil rights.

THE EARLY NINETEENTH CENTURY

New York in the early nineteenth century saw the fall from popularity and the eventual demise of the Federalist Party. Power shifted to the Republican-Democratic (eventually the Democratic) Party. While the Democratic Party eventually sped up the emancipation of black people in New York State, it was opposed to

³⁴ 2 LINCOLN, GUBERNATORIAL MESSAGES, *supra* note 32.

³⁵ *Id.*

³⁶ McMANUS, HISTORY, *supra* note 16, at 165. See also Edgar J. McManus, *Antislavery Legislation in New York*, 46 THE J. OF NEGRO HIST. 207 (Oct. 1961) [hereinafter McManus, *Antislavery*] and Gellman, *Race, the Public Sphere*, *supra* note 14, at 614.

³⁷ Act of Feb. 22, 1788, ch. 40, 675–76, 1788 Laws of N.Y.

³⁸ Act of Feb. 22, 1788, ch. 40, 675–76, 1788 Laws of N.Y.

³⁹ Act of Mar. 29, 1799, ch. 62, 388, 1798–99 Laws of N.Y. See also Carl Nordstrom, *The New York Slave Code*, 4 AFRO-AMERICANS IN N.Y. LIFE & HIST. 7, 19 (Jan. 1980).

⁴⁰ Act of Mar. 29, 1799, ch. 62, 388, 1798–99 Laws of N.Y.

⁴¹ Act of Mar. 29, 1799, ch. 62, 388, 1798–99 Laws of N.Y.

⁴² Act of Mar. 29, 1799, ch. 62, 388, 1798–99 Laws of N.Y.

granting civil rights and very much opposed to permitting black people to vote on the same basis as whites.⁴³ The Democrats believed that freed black voters would vote en masse for the Federalist Party. The Democrats had no intention of providing added votes to the Federalists.⁴⁴

In 1809, the legislature extended legal status to slave marriages by prohibiting the separate sale of slave spouses.⁴⁵ Finally, in 1817, the legislature, at the urging of Democratic governor Daniel Tompkins, enacted a general emancipation law to be effective in 1827, the year in which children born in 1799 would attain the age of twenty-eight.⁴⁶ Tompkins in a special message wrote:

I will now take the liberty of submitting to the legislature, whether the dictates of humanity, the reputation of the state, and a just sense of gratitude to the Almighty for the many favors he has conferred on us as a nation, do not demand that the reproach of slavery be expunged from our statute book.⁴⁷

Although the law abolished slavery as a domestic institution, nonresidents could bring slaves into the state for periods up to nine months.⁴⁸ The dispensation remained in effect until 1841 when the emergence of slavery as a national issue made its continuance unpalatable to most New Yorkers. “With the repeal of the transient privilege in 1841, slavery disappeared entirely from the life of the State.”⁴⁹

⁴³ See Stanley, *supra* note 8, at 414 (“The Democrats were solidly opposed to suffrage.”).

⁴⁴ It was believed by many that the black vote in New York City in 1813 had swung control of the state Assembly to the Federalists. See Fox, *supra* note 1 at 257. “Therefore, in their conflict with the state’s Federalists, the old New York Republican Party began its anti-Negro prejudice to test party regularity.” Kenneth L. Roff, *Brooklyn’s Reaction to Black Suffrage in 1860*, 2 AFRO-AMERICANS IN N.Y. LIFE & HIST. 29, 29 (Jan. 1978). See also 1 JABEZ D. HAMMOND, THE HISTORY OF POLITICAL PARTIES IN THE STATE OF NEW-YORK, FROM THE RATIFICATION OF THE FEDERAL CONSTITUTION TO DECEMBER, 1840 358 (4th ed. 1842). In later years, the Democrats feared that the black vote would go to the Whigs and eventually to the Republican Party.

⁴⁵ Act of Feb. 17, 1809, ch. 44, 1808 Laws of N.Y.

⁴⁶ Act of Mar. 31, 1817, ch. 138, 1817 Laws of N.Y.

⁴⁷ 2 LINCOLN, GUBERNATORIAL MESSAGES, *supra* note 32, at 880–81.

⁴⁸ Act of Mar. 31, 1817, ch. 138, 1817 Laws of N.Y.

⁴⁹ McManus, *supra* note 36, at 215. See also L. LLOYD STEWART, A FAR CRY FROM FREEDOM: GRADUAL ABOLITION (1799–1827) NEW YORK STATE’S CRIMES AGAINST HUMANITY 103–08 (2006) (discussing gradual abolition attempts in late 1700s and attempts by Council of Revision to block).

While the 1817 law gradually abolishing slavery did not address the issues of black civil rights, black men who became free were able to vote in the same manner as white men. While the 1817 law gradually abolishing slavery did not address the issues of black civil rights, black men who became free were able to vote in the same manner as white men. Nonetheless, the property requirement established for all voters in the first New York State constitution effectively prevented almost all black men from exercising the franchise.⁵⁰

To a certain extent, the political weakness of the Federalist Party added to the difficulties of black suffrage. The Republican-controlled legislature in 1811⁵¹ forced black men to present a certificate of freedom in order to vote.⁵² The law stated “[t]hat whenever any black or mulatto person shall present himself to vote at any election in this state, he shall produce to the inspectors or persons conducting such election, a certificate of his freedom.”⁵³ The Council of Revision had vetoed an earlier version of this bill.⁵⁴ However, rather than override the veto, the legislature, four days after the veto, simply passed a similar bill.⁵⁵

The requirement that voters of color show their certificate of freedom was strengthened in 1815 by requiring additional submissions for blacks to vote in New York City.⁵⁶ Not only was there a need for the certificate of freedom, but in order to vote, the black applicant in New York City had to establish:

[H]is freedom, the place of his birth, his age, the time when he became free, as nearly as the same can be ascertained, the length of time he has resided in said city, the street and number of the house (if there be any number to the same) in which he resides, whether he is a freeholder possessing a freehold of the value of twenty pounds within said city and county, or rents a tenement therein of the yearly

⁵⁰ Leo H. Hirsch, Jr., *The Free Negro in New York*, 16 J. OF NEGRO HIST. 415, 417 (Oct. 1931). See also FIELD, *supra* note 27, at 37.

⁵¹ *34th New York State Legislature*, REVOLVY, <https://www.revolvy.com/main/index.php?s=34th+New+York+State+Legislature> (last visited Apr. 22, 2018).

⁵² ANNUAL REPORT, Vol. 83, NEW YORK STATE LIBR. (1900).

⁵³ *Id.*

⁵⁴ Street, *supra* note 33, at 362–64.

⁵⁵ Act of Apr. 9, 1811, ch. 201, 287–88, 1811 Laws of N.Y.

⁵⁶ “Act of Mar. 29, 1813., ch. 145, 146, 1815 Laws of N.Y.

value of forty shillings, and been rated and actually paid taxes to this state.⁵⁷

The black applicant for voting also needed to file:

[A]t least five days before the commencement of any such election, to deliver in to the said register, in writing, an affidavit, stating the street and number of the house, (if there is a number to the same) in which his freehold, or tenement which he rents, is situated, the ward in which he was assessed, and the time, as near as he can ascertain the same, in which he paid taxes, which shall be signed and sworn to by such black or mulatto person.⁵⁸

Chancellor Kent on the Council of Revision objected to this legislation because it subjected voters to a different test in New York City than in the rest of the state and because it was “prescribing a different test of property to one class from what is prescribed to another class of citizen, and thus rendering the provision unequal and partial in its operation.”⁵⁹ He concluded the bill “is creating a precedent, which is the more dangerous, as it may hereafter be extended, on grounds equally just, to other descriptions of citizens, and prove fatal to the liberties of our country.”⁶⁰ Nonetheless, only one other member of the Council of Revision agreed with the Chancellor, and the added restrictions placed on black voting in New York City was passed by a vote of 3–2.⁶¹

THE 1821 CONSTITUTIONAL CONVENTION PUTS DISCRIMINATION INTO THE CONSTITUTION

The final efforts in disenfranchising black voters came about in the 1821 Constitutional Convention, which put explicit racially discriminatory voting prohibitions into the state constitution. The convention was largely controlled by the Bucktail Democrats,⁶² led

⁵⁷ Act of Mar. 29, 1813., ch. 145, 146, 1815 Laws of N.Y.

⁵⁸ Act of Mar. 29, 1813., ch. 145, 146, 1815 Laws of N.Y.

⁵⁹ 4 IN COUNCIL OF REVISION, THE EXAMINER, 27, 27 (Barent Gardenier ed., 1815); see Street, *supra* note 33, at 447.

⁶⁰ Street, *supra* note 33, at 448.

⁶¹ See IN COUNCIL OF REVISION, *supra* note 59, at 27.

⁶² By that time, the traditional Republican Party had begun to be known as the Democratic Party. See J. HAMPDEN DOUGHERTY, CONSTITUTIONAL HISTORY OF

by future president Martin Van Buren.⁶³ They “successfully sponsored an amendment to the state constitution which increased the property qualification for voting from \$100 to \$250 for Negroes while abolishing it altogether for whites.”⁶⁴ The delegates to the convention ended the property requirements for white male voters while establishing a property requirement for black males.⁶⁵ “Delegates attempting to couple white enfranchisement with black disenfranchisement masked neither their intentions nor their motives.”⁶⁶

The disenfranchisement efforts began in the committee on the right of suffrage. The committee provision made “every white male citizen, of the age of twenty-one years” potentially eligible to vote.⁶⁷ The committee, while recommending an end to the property requirement for white males, proposed a complete ban on black voting.⁶⁸

The “whites only” provision was subject of fierce debate at the convention.⁶⁹ Federalist Delegate Peter Jay (the son of former governor and Supreme Court Chief Justice John Jay) made a motion to abolish the “whites only” language in the Committee proposal.⁷⁰ He did not believe that the purpose of the convention was to restrict the right to vote from free people who already held the right. He asked, “Why are they . . . now to be deprived of all

THE STATE OF NEW YORK, 100 (2d ed. 1915).

⁶³ *Id.* at 100–01; see WILLIS FLETCHER JOHNSON ET AL., HISTORY OF THE STATE OF NEW YORK POLITICAL AND GOVERNMENTAL 437 (Ray B. Smith, ed., 1922). The Bucktail Republicans were largely opposed to the remaining Federalists and the De Witt Clinton wing of the Republican Party. They viewed Clinton as someone more interested in his personal power than in his party’s agenda. See JOHN ANTONY CASAIS, THE NEW YORK STATE CONSTITUTIONAL CONVENTION OF 1821 AND ITS AFTERMATH 1, 3–4, 43–44 (1967). Van Buren voted in support of the property requirement placed on black voters. He also voted not to eliminate all black males from voting. See VOTES AND SPEECHES OF MARTIN VAN BUREN, ON THE SUBJECTS OF THE RIGHT OF SUFFRAGE, THE QUALIFICATIONS OF COLOURED PERSONS TO VOTE, AND THE APPOINTMENT OR ELECTION OF JUSTICES OF THE PEACE IN THE CONVENTION OF THE STATE OF NEW-YORK 7–8, 11–13 (1840).

⁶⁴ EDGAR J. MCMANUS, A HISTORY OF NEGRO SLAVERY IN NEW YORK 187 (1966).

⁶⁵ JIM CROW NEW YORK, *supra* note 29, at 199.

⁶⁶ *Id.* at 90.

⁶⁷ JOURNAL OF THE CONVENTION OF THE STATE OF NEW YORK: BEGUN AND HELD AT THE CAPITOL IN THE CITY OF ALBANY, ON THE TWENTY-EIGHTH DAY OF AUGUST, 1821, 49–50 (1821), <https://babel.hathitrust.org/cgi/pt?id=mdp.35112105448767;view=1up;seq=9>.

⁶⁸ *See id.*

⁶⁹ *See* JIM CROW NEW YORK, *supra* note 29, at 90–91.

⁷⁰ *See id.* at 124.

those rights and doomed to remain forever as aliens among us?”⁷¹

Defenders of the color ban argued that since black people were not subject to taxation and other burdens they should not be given the right to vote.⁷² Other arguments showed a more explicit and severe racial bias. Delegate John Ross, who voiced numerous arguments in support of disenfranchising black voters, stated “they are a peculiar people, incapable, in my judgment, of exercising that privilege with any sort of discretion, prudence, or independence.”⁷³ He added that black people were, like aliens or minors, denied the right to vote because “they are deemed incapable of exercising it discreetly, and therefore not safely, for the good of the whole community.”⁷⁴ Delegate Samuel Young said, “The minds of the blacks are not competent to vote. They are too much degraded to estimate the value or exercise with fidelity and discretion that important right.”⁷⁵ Delegate Peter Livingston added, “Ask yourselves honestly, whether they have intelligence to discern, or purity of principle to exercise, with safety, that important right?”⁷⁶ Chief Justice Ambrose Spencer:

[H]ad no hesitation to say, that with regard to the blacks, whatever we have to accuse ourselves of, from our own fault, or the fault of our ancestors, we have the unquestionable right, if we think the exercise of this privilege by them will contravene the public good; we have a right to say they shall not enjoy it. This is consistent with the feelings of every man.⁷⁷

By a sharply divided vote of 63–59, Jay’s motion was carried and the white-only provision was removed from the Constitutional provision.⁷⁸ This hardly ended the issue of black

⁷¹ *Id.* at 111–12. Decades later, the New York Tribune described the gist of the argument of Jay and his supporters as follows: “They did not see why New York should be less just to the African Race after she abolished Slavery than she had been while a slave-holding State.” *The Right of Suffrage*, N. Y. TRIBUNE, June 12, 1845, at 2, <https://newspapers.com/image/79062751/>.

⁷² See JIM CROW NEW YORK, 199 (David N. Gellman & David Quigley eds., 2003).

⁷³ *Id.* at 105, 107.

⁷⁴ *Id.* at 107.

⁷⁵ *Id.* at 125.

⁷⁶ *Id.* at 135–36.

⁷⁷ JIM CROW NEW YORK, 131 (David N. Gellman & David Quigley eds., 2003).

⁷⁸ *Id.* at 142.

disenfranchisement. Instead, the issue of black suffrage was sent back to a newly formed select committee for recommendations.⁷⁹ The select committee in its report “admitted colored citizens to the right of suffrage upon a property test which was not applied to white voters, and as an apparent compensation for the denial of suffrage, colored persons were not to be subject to taxation unless they were also qualified to vote.”⁸⁰ Blacks would need a freehold estate valued at a minimum of \$250 in order to vote in New York.⁸¹ This report was subject to a short debate. Future president Martin Van Buren supported the compromise.⁸² Delegate Peter Sharpe supported this compromise, stating that:

[T]he report of the select committee proposed to make the blacks a privileged order, inasmuch as they were not liable to pay taxes, in certain cases, and were exempted from the performance of jury and military service. It was, therefore, but fair that some privileges should be withheld as an equivalent for these exemptions.⁸³

On the other hand, Peter Jay “hoped the committee would never consent to incorporate into the constitution a provision which contravened the spirit of our institutions, and which was so repulsive to the dictates of justice and humanity.”⁸⁴ Delegate Ezekiel Bacon:

[O]bjected to this mode of excluding the black

⁷⁹ *Id.* at 173.

⁸⁰ 3 LINCOLN, CONSTITUTIONAL HISTORY, *supra* note 13, at 94.

⁸¹ NATHANIEL H. CARTER & WILLIAM L. STONE, REPORTS OF THE PROCEEDINGS AND DEBATES OF THE CONVENTION OF 1821, ASSEMBLED FOR THE PURPOSE OF AMENDING THE CONSTITUTION OF THE STATE OF NEW YORK: CONTAINING ALL THE OFFICIAL DOCUMENTS, RELATING TO THE SUBJECT, AND OTHER VALUABLE MATTER, 329 (1821).

⁸² *See id.* at 364.

⁸³ *Id.*

⁸⁴ *Id.* at 365. Delegate Olney Briggs challenged the remarks of Delegate Jay asserting, “That gentleman has remarked that we must all ultimately lie down in the same bed together. But he would ask that honorable gentleman whether he would consent to lie down, in life, in the same feather bed with a negro? But it was said that the right of suffrage would elevate them. He would ask whether it would elevate a monkey or a baboon to allow them to vote? No, it would be to sport, and trifle, and insult them, to say they might be candidates for the office of president of the United States.” *Id.* at 365.

population from voting, because, in the first place, it was an attempt to do a thing indirectly which we appeared either to be ashamed of doing, or for some reason chose not to do directly, a course which he thought every way unworthy of us. This freehold qualification is, as it applies to nearly all the blacks, a practical exclusion, and if this is right, it ought to be done directly. By the adoption of this too, we involved ourselves in the most obvious inconsistency, declaring, thereby, that although property either real or personal, was no correct test of qualification in the case of a white man, it was a very good one in that of a black one, . . .⁸⁵

Jay's and Bacon's objections against the compromise were not successful. The Convention voted for the property requirement to be imposed on blacks by a vote of 72–31.⁸⁶ Most of the remaining Federalists voted against the compromise provision.

The work of the Constitutional Convention of 1821 made numerous changes in the eligibility for suffrage of voters in New York. For whites, they agreed upon a system that ended the distinction between voting for assembly members and voting for senators and governors.⁸⁷ The qualifications for voting would be identical, and the property requirement would be abolished for white voters.⁸⁸ In order for a black man to vote, he needed to own a "freehold estate of the value of two hundred and fifty dollars free

⁸⁵ See NATHANIEL H. CARTER & WILLIAM L. STONE, REPORTS OF THE PROCEEDINGS AND DEBATES OF THE CONVENTION OF 1821, ASSEMBLED FOR THE PURPOSE OF AMENDING THE CONSTITUTION OF THE STATE OF NEW YORK: CONTAINING ALL THE OFFICIAL DOCUMENTS, RELATING TO THE SUBJECT, AND OTHER VALUABLE MATTER, 369 (1821).

⁸⁶ *Id.* at 370.

⁸⁷ The Federalists still supported a property requirement for voting with Chancellor Kent remarking that universal suffrage, "[W]hen applied to the legislative and executive departments of government, has been regarded with terror by the wise men of every age, because in every European republic, ancient and modern, in which it has been tried, it has terminated disastrously, and been productive of corruption, injustice, violence, and tyranny. And dare we flatter ourselves that we are a peculiar people, who can run the career of history, exempted from the passions which have disturbed and corrupted the rest of mankind? If we are like other races of men, with similar follies and vices, then I greatly fear that our posterity will have reason to deplore, in sackcloth and ashes, the delusion of the day." See 3 LINCOLN, CONSTITUTIONAL HISTORY, *supra* note 13 at 643-44.

⁸⁸ DOUGHERTY, *supra* note 62, at 111–12.

and clear, upon which he had been rated and paid taxes.”⁸⁹

The 1821 Constitution did not establish a system of universal white suffrage. There were residency and tax requirements imposed on all potential voters, and women would remain barred from voting for another century.⁹⁰ While the property restriction was the main limitation placed on blacks, there were other provisions in the 1821 Constitution that treated blacks dissimilarly from whites. The convention gave:

[T]he vote to all male whites of the age of twenty-one years, inhabitants of the State for one year preceding an election and for six months resident of a town or county, who, within the year, had served in the militia or paid a tax to the State or county upon real or personal property. But no vote was to be given to a man of color unless he had been a citizen of the State for three years and for one year next preceding any election had owned a freehold estate of the value of two hundred and fifty dollars free and clear, upon which he had been rated and paid taxes.⁹¹

The work of the 1821 Constitutional Convention was submitted as a whole to the electorate in January of 1822. It passed easily with sixty-four percent of New Yorkers voting for the new constitution.⁹² “The provision did more than limit the number of Negroes who could vote; it simultaneously increased their isolation within New York society and their dependence upon those whites who accepted them at least as members of the political

⁸⁹ *Id.* at 112.

⁹⁰ *See id.* *See also 19th Amendment to the U.S. Constitution: Women’s Right to Vote (1920)*, OUR DOCUMENTS, <https://www.ourdocuments.gov/doc.php?flash=false&doc=63> (last visited May 16, 2018).

⁹¹ DOUGHERTY, *supra* note 62, at 112. *See* N.Y. CONST. of 1821 art. II, § 1.

⁹² For the vote on the new constitution, *see* the voting statistics on constitutional amendments: DEPARTMENT OF STATE, VOTES CAST FOR AND AGAINST PROPOSED CONSTITUTIONAL CONVENTIONS AND ALSO PROPOSED CONSTITUTIONAL AMENDMENTS, MANUAL FOR THE USE OF THE LEGISLATURE OF THE STATE OF NEW YORK, https://www.nycourts.gov/history/legal-history-new-york/documents/Publications_Votes-Cast-Conventions-Amendments.pdf (last visited May 16, 2018). The Ballotpedia website similarly has voting statistics on ballot measures in all states. *See New York Constitutional Convention, Amendment 1 (1821)*, BALLOTPEDIA, [https://ballotpedia.org/New_York_Constitutional_Convention,_Amendment_1_\(1821\)](https://ballotpedia.org/New_York_Constitutional_Convention,_Amendment_1_(1821)) (last visited May 16, 2018).

community.”⁹³ “Black Freemen used to vote here the same as Whites. In the Convention of 1821, ‘Democracy’ disenfranchised nine-tenths of the Colored Race—all but the Freeholders.”⁹⁴

In his State of the State address in 1825, Governor De Witt Clinton proposed to end the taxation requirements for voting. He wrote:

Without the right of suffrage, liberty cannot exist. It is the vital principle of representative government, and it ought therefore to be effectually fortified against accident, design, or corruption. The qualifications prescribed by the constitution for the exercise of the elective franchise, are full age, citizenship, residence for a designated time, payment of an assessed tax to the state or county or exemption from taxation, or performance of militia duty within, the year armed or equipped according to law, or assessment within the year to labor upon the public highways, and performance of the labor, or payment of an equivalent. This arrangement excludes a great body of citizens from the elective franchise.⁹⁵

The governor suggested an end to the tax requirements. His message stated, “I, therefore, submit to your consideration, whether the Constitution ought not to be so modified, as to render citizenship, full age, and competent residence, the only requisite qualifications.”⁹⁶

The legislature established a select committee which quickly reviewed Governor Clinton’s idea. The committee agreed to the need to end the tax requirement for white voters.⁹⁷ The legislature agreed to an amendment under which:

[E]very male citizen of the age of twenty-one years, who shall have been an inhabitant of this state one year next preceding any election, and for the last six months a

⁹³ BENSON, *supra* note 1, at 318.

⁹⁴ *The Blacks and the Tribune*, N. Y. TRIBUNE, July 21, 1846, at 2.

⁹⁵ LINCOLN, GUBERNATORIAL MESSAGES, *supra* note 32 at 4; JOURNAL OF THE ASSEMBLY OF THE STATE OF NEW-YORK AT THEIR FORTY-EIGHTH SESSION, BEGUN AND HELD AT THE CAPITOL, IN THE CITY OF ALBANY, THE 4TH DAY OF JANUARY, 1825, at 6 (1825).

⁹⁶ LINCOLN, GUBERNATORIAL MESSAGES, *supra* note 32, at 4.

⁹⁷ 3 LINCOLN, CONSTITUTIONAL HISTORY, *supra* note 13, at 5.

resident of the county where he may offer his vote, shall be entitled to vote in the town or ward where he actually resides, and not elsewhere, for all officers that now are or hereafter may be elective by the people.⁹⁸

The voters passed this resolution in 1826 which ended the tax requirements and simplified the residency requirements for white voters, yet no provision was made for black male voters. The longer residency provisions for blacks remained in effect. For blacks, the provision still read:

But no man of color, unless he shall have been for three years a citizen of this state, and for one year next preceding any election, shall have been seized and possessed of a freehold estate of the value of two hundred and fifty dollars, over and above all debts and incumbrances charged thereon; and shall have been actually rated and paid a tax thereon, shall be entitled to vote at such election.⁹⁹

Thus, the 1826 amendments worked to widen the gaps between potential white and black voters. Black voters faced a longer residency requirement than whites, and they were also subject to the continued property requirement. The 1826 amendment, while easing the path to white male universal suffrage, more than continued its discrimination against black male voters. At the 1826 election, 98% of the electorate voted in support of the amendment to the Constitution.¹⁰⁰

THE 1846 CONSTITUTIONAL CONVENTION: VOTERS REJECT EQUAL VOTING RIGHTS

In the decades after the 1821 convention, an added focus started to be placed on the issue of the civil rights of black people in New York State. “Within two decades the black suffrage question would bitterly divide New Yorkers.”¹⁰¹ The formal abolitionist movement got its start in the early 1830’s with William Lloyd Garrison’s

⁹⁸ *Id.*

⁹⁹ JIM CROW NEW YORK, *supra* note 29, at 199.

¹⁰⁰ *See* DEPARTMENT OF STATE, *supra* note 92.

¹⁰¹ FIELD, *supra* note 27, at 37.

publication of *The Liberator*.¹⁰² Black people in New York and in the nation became more active in politics by publishing newspapers, creating their own institutions, and holding their own National Negro Conventions.¹⁰³ The Whig Party largely replaced what had been the Federalist Party in New York, and some of its early champions in New York, Governor William Seward, New York Tribune publisher Horace Greeley,¹⁰⁴ and political boss and newspaper publisher Thurlow Weed,¹⁰⁵ supported reforms to improve the conditions of blacks.

During his two terms as governor, Seward signed legislation that would authorize trial by jury for “fugitive” slaves brought into New York¹⁰⁶ which effectively freed slaves who were transported into New York state by their masters,¹⁰⁷ and provide for a New York City public school system that was open to all children, thus allowing black people to obtain an education.¹⁰⁸ In his annual message to the legislature in 1841, Seward called black people “an unfortunate race, which, having been plunged by us into degradation and ignorance, has been excluded from the franchise by an arbitrary property qualification incongruous with all our

¹⁰² See Sandra L. Rierson, *The Thirteenth Amendment as a Model for Revolution*, 35 VT. L. REV. 765, 835 (2011).

¹⁰³ See Shawn C. Comminney, *National Black Conventions and the Quest for African American Freedom and Progress, 1847–1867*, 91 INT’L SOC. SCI. REV. 1 (2015).

¹⁰⁴ Greeley’s Tribune in 1845 and 1846 ran numerous stories and editorials in support of universal black suffrage. See e.g. “*Democracy and Black Suffrage*,” GREELEY’S TRIBUNE, Oct. 23, 1846; “*The Amended Constitution*,” N.Y. TRIBUNE, Oct. 12, 1846; “*Equal Rights vs. The News*,” N.Y. TRIBUNE, Mar 27, 1846; “*Appeal for Rights! by the People of Color*,” N.Y. TRIBUNE, Jan. 23, 1846; “*The Right of Suffrage*,” N.Y. TRIBUNE, June 12, 1845; “*The Right of Suffrage--The M. News*,” N.Y. TRIBUNE, June 9, 1845.

¹⁰⁵ See WILLIS FLETCHER JOHNSON ET AL., *supra* note 63, at 221.

¹⁰⁶ PAUL FINKELMAN, *THE PROTECTION OF BLACK RIGHTS IN SEWARD’S NEW YORK*, 212 (1988).

¹⁰⁷ *Id.* See e.g., *Lemmon v. People*, 20 N.Y. 562 (1860). This decision ended the exemption in the law which allowed slave owners to bring their slaves into New York for up to nine months.

¹⁰⁸ PAUL FINKELMAN, *THE PROTECTION OF BLACK RIGHTS IN SEWARD’S NEW YORK*, 212 (1988).

See e.g., Ian Bartrum, *The Political Origins of Secular Public Education: The New York School Controversy, 1840–1842*, 3 N.Y.U. J.L. & LIBERTY, 267, 298 (2008); Howard LeRoy Mattice, *The Growth and Development of Roman Catholic Education In New York City: 1842–1845*, 18 (1979) (“Prior to 1842 New York State delegated responsibility for education in New York City to private and religious agencies. The failure of the Public School Society to provide education for large numbers of school aged children of the City brought a withdrawal of State financial support in 1842.”)

institutions.”¹⁰⁹

Movements of people into New York from other states brought changes in the attitudes of the public. Many people from New England moved to northern and Western New York. These “Yankee” settlers brought with them strong anti-slavery beliefs, and western and northern New York supported black suffrage far more than the other areas of New York State.¹¹⁰ The Mexican War brought out further attention to the issue of slavery in the territories acquired by the United States from Mexico. Many people from the North favored the Wilmot Proviso,¹¹¹ which would have banned slavery in the territory acquired from Mexico.¹¹² While the proviso was not passed by Congress, it made the overall issue of American slavery a bigger issue throughout the nation.

Both the Whigs and the Democrats by the mid-1840s agreed on the basic need to hold a new constitutional convention for the state. “The full force of Jacksonian democracy was reaching its peak and popular demand increased for the calling of the fourth convention.”¹¹³ There was a need to have more offices subject to elections, restrictions on public debt, and an overhaul of the judiciary system.¹¹⁴ In 1845, 86% of New York voters supported the calling of the convention.¹¹⁵

The voting on the delegates was held in late April of 1846, and the Democrats had a clear majority. Even Horace Greely’s *Tribune* quoted the Territorial Gazette, saying that “there will be a very large majority of Democrats in the Convention sufficiently large for all practical purposes.”¹¹⁶ The democratic took a majority of the 128 seats.¹¹⁷

¹⁰⁹ See 2 THE WORKS OF WILLIAM H. SEWARD 280 (George Baker 1853).

¹¹⁰ See Stanley, *supra* note 8, at 425–27; See David Maldwyn Ellis, *The Yankee Invasion of New York, 1783–1850*, N.Y. HIST. 32 (Jan. 1951). The Liberty Party, which was dedicated to abolishing slavery, had its first meetings in Wyoming County in western New York in 1839 and 1840.

¹¹¹ See G. Randal Hornaday, *The Forgotten Empire: Pre-Civil War Southern Imperialism*, 36 CONN. L. REV. 225, 253 (2003).

¹¹² *Id.*

¹¹³ Richard I. Nunez, *New York State Constitutional Reform – Past Political Battles in Constitutional Language* 10 WM. & MARY L. REV. 366, 367 (1968).

¹¹⁴ DOUGHERTY, *supra* note 62, at 163.

¹¹⁵ *New York 1845 Ballot Measures*, BALLOTPEDIA, https://ballotpedia.org/New_York_1845_ballot_measures (last visited May 16, 2018).

¹¹⁶ “Constitutional Convention--Official Returns,” NEW YORK TRIBUNE, May 7, 1846.

¹¹⁷ See III JABEZ D. HAMMOND, THE POLITICAL HISTORY OF THE STATE NEW-YORK 605 (1848).

It is likely that anti-black sentiments helped to lead to the major vote for the Democrats. Just before the vote, there had been the horrendous murder of four members of the Van Nest family in Auburn, New York, by a young black man.¹¹⁸ The Van Nest case drew significant publicity across the state,¹¹⁹ with William Seward ending up as the defense attorney for the defendant, who was likely developmentally disabled.¹²⁰ Even Greeley conceded that support for black suffrage was unpopular and may have contributed to the defeat of the Whigs, but he added, “We still say that the Extension and Equalization of Suffrage should be sustained to the end with unflinching fidelity and energy.”¹²¹

The suffrage issue was taken up late in the process of the convention. Former Democratic Governor William Bouck chaired the committee on the elective franchise, and that committee on July 15, 1846, in the seventh week of the convention, issued its report. The report, according to Bouck, was “made with the unanimous approbation of the committee though the members of the committee had not all agreed to the whole of its sections.”¹²² The report recommended that voters be United States citizens for sixty days and reside in their electoral districts for at least sixty days before voting.¹²³ Most significantly, it limited voting only to “white male” citizens.¹²⁴ Rather than totally disenfranchise blacks, the committee recommended a separate vote by the electorate on whether “colored male citizens” would be allowed to vote on the same terms as white citizens.¹²⁵

¹¹⁸ See BENJAMIN F. HALL, *THE TRIAL OF WILLIAM FREEMAN FOR THE MURDER OF JOHN G. VAN NEST* (1848).

¹¹⁹ See “*The Fleming Tragedy*,” ALBANY ARGUS, March 23, 1846; “*The Horrible Murder in Cayuga*,” N.Y. TRIBUNE, March 18, 1846; “*The Auburn Murder!*,” AUBURN JOURNAL AND ADVERTISER, Mar. 13, 1846; “*Horrid and Atrocious Murder*,” ONEIDA WHIG, March 17, 1846.

¹²⁰ See *Freeman v. People*, 4 Denio 9 (N.Y. 1847). This case established the M’Naghten Rule governing insanity in New York courts. See also Cynthia G. Hawkins-Leon, *Literature as Law: The History of the Insanity Plea and a Fictional Application Within the Law & Literature Canon*, 72 TEMPLE L. REV. 381 (1999).

¹²¹ “*The Suffrage Question*,” N.Y. TRIBUNE, June 2, 1846.

¹²² S. CROSWELL & R. SUTTON, REPORT OF THE DEBATES AND PROCEEDINGS IN THE NEW-YORK STATE CONVENTION FOR THE REVISION OF THE CONSTITUTION 246 (1846). For another report of the debates, see WILLIAM G. BISHOP & WILLIAM H. ATTREE, REPORT OF THE DEBATES AND PROCEEDINGS OF THE CONVENTION FOR THE REVISION OF THE CONSTITUTION OF THE STATE OF NEW YORK (1846).

¹²³ CROSWELL & SUTTON, *supra* note 122; See also 1 DOCUMENTS OF THE CONVENTION OF THE STATE OF NEW YORK 1846, No. 51 (July 15, 1846).

¹²⁴ CROSWELL & SUTTON, *supra* note 122.

¹²⁵ *Id.*

Action on the committee report did not come to the floor of the Convention until October 1. It was subject to a spirited debate. A motion was made to repeal the “whites only” requirement of voting. Speaking for the committee report and in opposition to the motion, delegate Andrew Kennedy explained that the committee did not think that the property qualification was a relevant factor in determining whether a group or a person was entitled to vote.¹²⁶ Nonetheless, he was firmly opposed to any black voting. Suffrage was a privilege, not a right. He said:

To permit the Ethiopian race to become an important portion of the governing power of the state! To allow that race, the farthest removed from us in sympathy and relationship of all into which the human family was divided, to become a participant in governing, not themselves, but us! Nature revolted at the proposal.¹²⁷

In response to delegate Kennedy and in support of the motion, Delegate Bruce made an impassioned appeal on behalf of equal rights. “He called upon the Convention to decide whether the colored people were men or not. If they were men, he claimed for them the enjoyment of the common rights of men; otherwise make them slaves to yourselves and your children and trample them in the dust forever.”¹²⁸

A motion to repeal the “whites only” provision of the committee report lost by a vote of 31–62.¹²⁹

Having determined that black people should not vote on the same basis as white people, the convention then moved to the issue of whether a limited number of black people should vote. Many delegates suggested retaining the existing property qualifications for black voters.¹³⁰ Delegate W. H. Spencer believed that the existing property qualifications for black freeholders of \$250 was

¹²⁶ *Id.* at 783.

¹²⁷ *Id.*

¹²⁸ *Id.* at 785.

¹²⁹ *Id.*

¹³⁰ This made for an awkward debate, part of which focused on interpreting for purposes of the implications of the electoral franchise, the Biblical stories about Noah and the ark, and the tower of Babel. The Democrats were generally opposed to property qualifications but were not enthusiastic about any voting by blacks. The Whigs had to choose between no blacks voting and a small number of blacks (estimated at 1,000) voting.

too high and moved to lower the qualification minimum amount to \$100.¹³¹ That proposal was rejected by a vote of 42–50.¹³² On a broader vote to restore the property qualification for black voters, the convention voted by a 63-32 vote margin to continue the \$250 property qualification.¹³³

On October 6, one additional amendment was offered to remove the “whites only” language and allow black men to vote on the same basis as white men. That amendment was rejected by a vote of 28–75.¹³⁴

An analysis of the vote at the convention shows that the Democrats were the main opponents of black voting rights. A core of approximately thirty Democrats voted against all proposal allowing blacks to vote at all. The Whigs were the main supporters of black voting rights.¹³⁵

Under the convention vote, the main body of the Constitution to be submitted to the electorate preserved the 1821 convention’s property requirement for black voting.¹³⁶ “The final result was [that] there was no change. Blacks, unlike their white neighbors, would still have to meet a property qualification in order to vote.”¹³⁷ There would, however, be a separate stand-alone submission of the universal black suffrage (recommended by the electoral committee)¹³⁸ and subsequently passed by the Convention. The *New-York Tribune* called this a “naked question” on black voting.¹³⁹ So New York’s voters in 1846 voted on two measures. First was the broad general new constitution, and the second was a separate proposition on the question of whether blacks would still face a property qualification in order to vote.

The main vote on the new constitution passed overwhelmingly

¹³¹ CROSWELL & SUTTON, *supra* note 122, at 789.

¹³² *Id.* at 790.

¹³³ *Id.* at 791.

¹³⁴ *Id.* at 820.

¹³⁵ See FIELD, *supra* note 27, at 231–35.

¹³⁶ The applicable language still read, “But no man of color, unless he shall have been for three years a citizen of this State, and for one year next preceding any election shall have been seised and possessed of a freehold estate of the value of two hundred and fifty dollars, over and above all debts and incumbrances charges thereon, and shall have been actually rated and paid a tax thereon, shall be entitled to vote at such election.” See I.R. ELWOOD, CONSTITUTION OF THE STATE OF NEW YORK, ADOPTED NOVEMBER 3, 1846 TOGETHER WITH MARGINAL NOTES AND A COPIOUS INDEX 8 (1846).

¹³⁷ See FIELD, *supra* note 27, at 53.

¹³⁸ DOCUMENTS OF THE CONVENTION, *Supra* note 123, at 2.

¹³⁹ See N.Y. TRIBUNE, Apr. 10, 1841, <https://chroniclingamerica.loc.gov/lccn/sn83030212/1841-04-10/ed-1/seq-1/>.

with more than 70% of the voters in support.¹⁴⁰ The full black suffrage vote, however, was overwhelmingly defeated. On the voting referendum, more than 72.4% of New Yorkers voted against ending the property requirements for black voters.¹⁴¹ Universal black suffrage only had a majority of the vote in ten of New York's then fifty-seven counties.¹⁴² These counties were all in northern, central or western New York. In northern New York, universal black suffrage received a majority of the vote in Clinton, Essex, Franklin, Warren and Washington counties. In central and western New York, the counties in support of black suffrage were Cattaraugus, Cortland, Madison, Oswego, and Wyoming.¹⁴³ In eleven counties, more than 90% of the voters opposed universal black suffrage,¹⁴⁴ led by Queens County, where 97.9% of the voters opposed universal black suffrage.¹⁴⁵

The *New York Herald*, which was one of the leading media voices against expanded black suffrage,¹⁴⁶ said, "The vote against negro suffrage is very decided—sufficiently to quench what little abolition feeling there was left,"¹⁴⁷ and that the vote was "enough to convince the friends of the negro and the abolitionists that the people of this state are decidedly opposed to placing the blacks on a political equality with themselves."¹⁴⁸

Given the overwhelming defeat of the referendum to end the property qualifications for black suffrage, it appeared unlikely that

¹⁴⁰ See *New York Constitutional Amendment*, BALLOTPEDIA, [https://ballotpedia.org/New_York_Constitutional_Amendment,_Amendment_1_\(1846\)](https://ballotpedia.org/New_York_Constitutional_Amendment,_Amendment_1_(1846)) (last visited May 16, 2018). The Albany Atlas said in December of 1846 that "for radical democracy it has been a triumph wholly unequalled in the history of the elections of the State." *The Result of the N.Y. State Election: Its Causes and Consequences*, ALBANY ATLAS EXTRA, Dec. 1846, available at <https://play.google.com/books/reader?id=hNstAAAAAYAAJ&printsec=frontcover&output=reader&hl=en&pg=GBS.PA1>.

¹⁴¹ *New York Repeal of Property Qualification for African Americans*, BALLOTPEDIA, [https://ballotpedia.org/New_York_Repeal_of_Property_Qualification_for_African_Americans,_Amendment_2_\(1846\)](https://ballotpedia.org/New_York_Repeal_of_Property_Qualification_for_African_Americans,_Amendment_2_(1846)) (last visited May 16, 2018).

¹⁴² FIELD, *supra* note 27, at 236–37.

¹⁴³ *Id.*

¹⁴⁴ *Id.* at 62.

¹⁴⁵ *Id.* At that time, Queens County included current Nassau and Queens counties.

¹⁴⁶ The Herald's founder and publisher, James Gordon Bennett, "staunchly opposed abolition and ridiculed the notion of equality for African Americans." HAROLD HOLZER, LINCOLN AND THE POWER OF THE PRESS 27 (2014).

¹⁴⁷ "Editorial," NEW YORK HERALD, Nov. 13, 1846.

¹⁴⁸ "Negro Suffrage - The Abolition Vote," NEW YORK HERALD, Nov. 14, 1846.

the vote on the measure would soon be repeated in New York. Additionally, the Whig Party, which had been the primary supporter of black voting rights, was beginning to fall apart across the nation.¹⁴⁹ Nonetheless, as the issues of slavery and black civil rights took center stage in the nation, the movement to end discrimination in voting in New York took on renewed life in the mid- to late-1850s. There were three primary factors which led to this renewed interest. Black activists and their white supporters became increasingly more active in fighting for civil rights.

Civil-rights controversies intensified in Washington due to the Compromise of 1850, the Kansas Nebraska Act, and the Dred Scott decision.¹⁵⁰ The existing parties fractured under the weight of the civil rights debate. The Whig Party went out of existence, and Northern Whigs largely formed the new Republican Party.¹⁵¹ In the late 1850s, the Republican Party came to dominate the New York State legislature.¹⁵²

Starting “in 1855[,] numerous petitions were presented from different parts of the state favoring equal suffrage for colored persons, and an amendment proposed abrogated the disqualifications of colored voters.”¹⁵³ The Assembly passed a resolution to amend the Constitution to authorize universal black suffrage in that year, but it was not taken up by the Senate.¹⁵⁴ While no resolution to end the property qualifications for black voters passed in 1856, in 1857 both the Senate and the Assembly passed a resolution to end the property qualification.¹⁵⁵ In the Senate it passed by a vote of 21–5.¹⁵⁶ The Assembly vote was 75–27.¹⁵⁷ But the proposal hit a procedural snag—one that turned out

¹⁴⁹ See Allen C. Guelzo, *The Rise and Fall of the American Whig Party: Jacksonian Politics and the Onset of the Civil War* by Michael Holt, 22 J. OF THE ABRAHAM LINCOLN ASS'N 71–86, <https://quod.lib.umich.edu/j/jala/2629860.0022.206?view=text;rgn=main>.

¹⁵⁰ 怀亮 are the three f60 U.S. 393 (1857).

¹⁵¹ 怀特 S. 393 (1857) *What Can the Collapse of the Whig Party Tell Us About Today's Politics*, SMITHSONIAN.COM (Apr. 12, 2016), <https://www.smithsonianmag.com/history/what-can-collapse-whig-party-tell-us-about-todays-politics-180958729/>.

¹⁵² 怀特 party

¹⁵³ 3 LINCOLN, CONSTITUTIONAL HISTORY, *supra* note 13, at 231.

¹⁵⁴ 怀德, *supra* note 27, at 91. It passed the Assembly by a vote of 66–34. The Herald using reporting from the Albany Argus claims that the vote was 66–34. “Right of Suffrage to be Extended to Negroes,” N.Y. HERALD, Apr. 14, 1855. See also “The Legislature,” N.Y. TRIBUNE, Apr. 16, 1855.

¹⁵⁵ FIELD, *supra* note 27, at 99.

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to be fatal. Under the 1846 Constitution, a resolution to amend the Constitution, in order to be submitted to the electorate for ratification, had to be passed by two legislative sessions, with the second session taking place after the next election of state senators.¹⁵⁸ After first passage, there were certain publication requirements. A constitutional amendment first passed in 1857 had to be published three months before the general election in November of 1857.¹⁵⁹ The universal suffrage amendment, however, was not published within the time limits. "Governor John A. King in his message of 1858 said that these resolutions had been inadvertently sent to the executive chamber with bills, and were laid aside and overlooked, and, not being called for, were not published as required by the Constitution."¹⁶⁰ The *Tribune* found that "an awkward blunder has been made at Albany by somebody."¹⁶¹ That meant that the process to start the Constitutional revision would need to start anew in 1858.

In 1858, however, no resolutions to authorize universal suffrage were passed. While the Republicans had more seats in the Assembly and the Senate than any other party, they did not have a majority in either house.¹⁶² It took until 1859 when there was strong Republican party control of both houses of the legislature for the process to begin in earnest. In 1859, with near unanimous Republican support, the universal suffrage resolution was passed by both houses.¹⁶³

In 1860, the process continued. In his annual message, Republican Governor Edwin Morgan recommended second passage of the constitutional amendment ending the property qualification for men of color.¹⁶⁴ It passed the Assembly by a vote of 70-36.¹⁶⁵ Speaking against the bill was Democratic Assemblyman Theophilus Callicot who made what the *New-York Tribune* termed a "labored argument"¹⁶⁶ against the resolution. Callicot argued that black people could not be citizens and thus

¹⁵⁸ *See id.* at 100. *See also*, N.Y. CONST. OF 1846, art. 13, § 1.

¹⁵⁹ *Id.* (requiring that any constitutional amendment "shall be published for three months previous to the time of making such choice.").

¹⁶⁰ "OF MAKING SUCH CHOICE HISTORY," *supra* note 13 at 232.

¹⁶¹ *Editorial*, N.Y. TRIBUNE, Sept. 4, 1857, at 4.

¹⁶² *Id.*, *supra* note 27, at 100.

¹⁶³ *Id.*, 1857, at, N.Y. TIMES, Mar. 24, 1859. All but one Republican voted for the resolution in the Assembly where it passed by a vote of 83-21.

¹⁶⁴ "2. GUBERNATORIAL MESSAGES," *supra* note 32, at 193-94.

¹⁶⁵ *Editorial Message*, N.Y. TRIBUNE, Feb. 11, 1860, at 7.

¹⁶⁶ *Id.*

should not be entitled to vote in the same manner as white people. He stated that the property qualifications prevented black people from moving to New York and had been helpful in reducing the black population of New York State from 50,027 in 1840 to 45,286 in 1855.¹⁶⁷ He said, “But let our Constitution be amended, or mutilated, as this resolution proposes, and we shall at once invite hordes of blacks to pour into this state and compete with white labor; we shall aim a dangerous blow at the dignity and prosperity of the State.”¹⁶⁸ Nonetheless, the State Senate passed the resolution a month later by a vote of 17-9.¹⁶⁹

The campaign for universal suffrage in 1860 was hard fought by the state Democratic Party. “Democratic politicians were explicit in their denunciations of those who would grant black men the right to vote.”¹⁷⁰ The Democrats made a series of arguments against the resolution. It would take jobs from the white working class and immigrants. It was a ploy by the Republicans to find a block of voters who would vote consistently Republican. The Republicans were trying to block the power of white immigrants. Voting for the amendment would help bring on a civil war. “In 1860, all good Democrats used the race issue.”¹⁷¹

The newspaper attack on the amendment from the Democrats was especially strong. The *New York Herald*, in numerous articles and editorials, excoriated the amendment.¹⁷² The *Herald* found that “[g]iving them permission would not improve their condition, but considering their general want of education and their vices in large cities, it would prove a source of corruption to them and an injury to the community at large.”¹⁷³ The *Herald* summarized that under the ballot proposal, “All the black thieves and paupers, rogues and rascals of the Five Points, Church Street, West Broadway and the alleys throughout the city where crime and the most degrading vice and ignorance prevail among the colored population, would have the same right to vote as the best white

¹⁶⁷ 怀克 11, 1860, at 7, N.Y. TIMES, Feb. 15, 1860.

¹⁶⁸ 怀德

¹⁶⁹ 怀克 15, 1860, at 7, N.Y. TRIBUNE, Mar. 19, 1860. See also, 1860 N.Y. Laws 597 perfected the resolution and provided the procedure for its submission to the voters.

¹⁷⁰ JIM CROW NEW YORK, *supra* note 29, at 271.

¹⁷¹ 怀克 7, *supra* note 27, at 119.

¹⁷² 怀德 19, *Adjournment of the Legislature*, N.Y. HERALD, Apr. 19, 1860; *Opinion, The Negro Suffrage Question: Will The People Sanction It*, N.Y. HERALD, Sept. 8, 1860; *Editorial*, N.Y. HERALD, Nov. 6, 1860, at 4 (advising voters to “vote early, call your neighbor to vote early also, but be sure to vote early yourself”).

¹⁷³ *Editorial*, N.Y. HERALD, Sept. 18, 1860, at 6.

republicans in the community.”¹⁷⁴ The *Albany Argus*, one of the more significant Democratic newspapers, ran articles opposed to universal black suffrage.¹⁷⁵

The Republican Party was also aware that the universal suffrage proposal was not likely to be a popular one. As a result, the party’s efforts to have the electorate approve the measure tended to be very low-key.

Additionally, the demography of New York had changed significantly since 1846, and politicians opposed to civil rights would argue that gains in black voting would come at the expense of new immigrants. New York City grew far bigger, and a wave of immigrants came to New York. In 1850, 11.5% of white Americans were foreign-born.¹⁷⁶ But in New York State in 1860, more than a quarter of the white population was foreign-born.¹⁷⁷ Nearly half a million New York residents had been born in Ireland and a quarter of a million had been born in the German states.¹⁷⁸ The foreign-born population increased in New York by more than one-third of a million from 1850–1860.¹⁷⁹ Forty-seven percent of the residents in New York City were foreign-born in 1860.¹⁸⁰ In Kings County (Brooklyn) in 1860, nearly thirty-nine percent of the residents were foreign-born.¹⁸¹

New York City had 805,000 residents, up from 371,000 from the

¹⁷⁴ *Editorial*, N.Y. HERALD, Mar. 8, 1860.

¹⁷⁵ FIELD, *supra* note 27, at 118 (citing *Albany Argus* newspaper).

¹⁷⁶ *Field* 18 (citing *Origin of the Population by Nativity: 1850 to 1990*, U.S. CENSUS BUREAU (Mar. 9, 1999), <https://www.census.gov/population/www/documentation/twps0029/tab08.html>).

¹⁷⁷ *ocu Population of the United States in 1860: New York*, U.S. CENSUS BUREAU, <https://www2.census.gov/library/publications/decennial/1860/population/1860a-26.pdf>, (last visited Apr. 19, 2018).

¹⁷⁸ See Pat Young, *Which States Did Immigrants Live In? Census of 1860*, CIVIL WAR TALK (Feb. 6, 2017), <https://civilwartalk.com/threads/which-states-did-immigrants-live-in-census-of-1860.131243/>.

¹⁷⁹ *Field*

¹⁸⁰ *Field*://civilwarImmigrant America on the Eve of the Civil War, LONG ISLAND WINS (Mar. 2, 2011), <https://longislandwins.com/news/national/immigrant-america-on-the-eve-of-the-civil-war/>. See also *Population of the United States in 1860: New York*, *supra* note 177. The 1860 percentage of foreign-born residents in New York City remains the highest ever recorded in any census.

¹⁸¹ *Field* “Young *supra* note 177.

state census in 1845.¹⁸² Brooklyn had 266,000 residents.¹⁸³ The immigrant population from Ireland and Germany voted with the Democrats, and the Democrats had argued that the Republican Party was not only anti-immigrant but that giving civil rights to blacks would harm the ability of immigrants to obtain jobs.¹⁸⁴ Thus, with the growth of New York City and with far more immigrants from outside the British Isles in New York, any amendment to provide blacks with voting rights would face difficult sledding in New York State.

That was indeed what happened. The amendment to end the property qualification for black voting failed with 63.6% of New York voters opposed to the amendment.¹⁸⁵ While still a resounding loss, the vote was somewhat closer than in 1846 when 72.4% of New Yorkers opposed the resolution.¹⁸⁶ Again, in downstate New York, the voting was especially heavy against the measure. In New York City, 86.1% of the electorate voted against the resolution.¹⁸⁷ In 1846, the vote in New York City was 85.4% in opposition, and 92.3% of the vote in Queens County was against the resolution.¹⁸⁸ The Hudson Valley counties voted heavily against the resolution with 97.6% of Rockland County and 93% of Putnam County voting in opposition to universal black voting.¹⁸⁹

Nineteen counties did vote in support of the proposition.¹⁹⁰ All of these counties were in northern, central, and western New York. The county with the highest support for black suffrage was St. Lawrence with 66.8% of the voters in support of the resolution.¹⁹¹ Few counties with significant urban areas supported the resolution. The one county with a large city where the resolution was supported was Onondaga County (home of Syracuse) where

¹⁸² 怀特 See also *1845 New York State Census, Census of the County of New York*, http://nysl.cloudapp.net/awweb/main.jsp?flag=collection&smd=1&cl=all_lib&field11=836759&tm=1526488698544&itype=adv&menu=on (last visited May 16, 2018).

¹⁸³ 怀德 At that time, New York City was simply confined to New York County.

¹⁸⁴ FIELD, *supra* note 27, at 116.

¹⁸⁵ 怀德 at 127.

¹⁸⁶ 怀德

¹⁸⁷ 怀德 at 237.

¹⁸⁸ 怀德

¹⁸⁹ FIELD, *supra* note 27, at 116.

¹⁹⁰ 怀德 See also *N.Y. Vote on Universal Black Male Suffrage Amendment, 1860*, FURMAN U., <http://facweb.furman.edu/~bensonlloyd/civwar/NYBlackSuffrage1860.png> (last visited May 16, 2018).

¹⁹¹ FIELD, *supra* note 27, at 237.

52.8% of the voters supported the measure.¹⁹² Overall, in a year where Republican candidate for president Abraham Lincoln received 53% of the vote in New York, New Yorkers voted decisively to continue property requirements for black voters.¹⁹³

AFTER THE CIVIL WAR: THE 1867 CONVENTION AND THE THIRD REJECTION OF EQUAL SUFFRAGE

The 1860 defeat in New York of the equal-suffrage amendment did not end the issue. The Civil War, the significant contributions made to the Union Army by black soldiers, the passage of the Thirteenth Amendment to abolish slavery, and the measures passed by Congress to force the former Confederate states to include blacks in their government all kept the issue of black civil rights in the forefront.¹⁹⁴ Moreover, the Republican Party had by now largely been committed to the need to support black suffrage. Thurlow Weed's newspaper, the *Albany Evening News*, stated in 1867, "[f]or good or ill, for weal or woe, the Republican party is committed to the principle of Negro suffrage. It cannot evade the issue, and it should not if it could."¹⁹⁵

In New York, the issue arose with the mandatory referendum for a constitutional convention in 1866. The 1846 Constitution established a system under which the people would vote every twenty years on whether to hold a constitutional convention.¹⁹⁶ The people voted by a margin of approximately 58% to 42% in support of the constitutional convention.¹⁹⁷ Republican Governor Ruben Fenton in his legislative message in 1867 commented, "[t]he large majority by which such a convention as ordered is an emphatic expression of the public judgment that some modification of the organic law is essential to the general welfare."¹⁹⁸ The election for delegates to the convention was held in April, and it resulted in a clear victory for the Republican Party. Ninety-seven of the 160 delegates were Republicans.¹⁹⁹

¹⁹² *Id.*

¹⁹³ *Id.* at 127.

¹⁹⁴ *Id.* 27..sat 164.

¹⁹⁵ *Id.* at 164 (citing ALBANY EVENING J., Mar. 19, 1867).

¹⁹⁶ *Id.* Mar. 19, 1867).FFRAGart. 13, § 2.

¹⁹⁷ *New York Constitutional Convention Amendment*, BALLOTPEDIA, [https://ballotpedia.org/New_York_Constitutional_Convention,_Amendment_1_\(1866\)](https://ballotpedia.org/New_York_Constitutional_Convention,_Amendment_1_(1866)) (last visited Apr. 21 2018).

¹⁹⁸ 3 LINCOLN, CONSTITUTIONAL HISTORY, *supra* note 13, at 241.

¹⁹⁹ *Id.* HOMER A. STEBBINS, A POLITICAL HISTORY OF THE STATE OF NEW YORK

At the convention, Horace Greeley, an at-large Republican delegate, chaired the committee “on the right of suffrage and the qualifications to hold office.” The committee on June 28, 1867, issued its report and recommended an end to the property qualification for black suffrage. The committee determined to “strike out all discriminations based on color.”²⁰⁰ Its report stated:

Whites and blacks are required to render like obedience to our laws and are punished in like manner for their violation. Whites and blacks were indiscriminately drafted and held to service to fill our State’s quotas in the War whereby the Republic was saved from disruption. We trust that we are henceforth to deal with men according to their conduct, without regard to their color. If so, the fact should be embodied in the Constitution.²⁰¹

The Democrats on the committee in a minority report suggested that the people should have a direct say on the issue of black voting rights, that should be made in a separate submission to the voters.²⁰² The minority report stated:

As respects the extension of suffrage to colored the same as to white citizens of the State, the undersigned submit that if the regeneration of political society is to be sought in the incorporation of this element into the constituency, it must be done by the direct and explicit vote of the electors. We are foreclosed from any other course by the repeated action of the State.²⁰³

The minority report added “that a proposition further to extend the elective franchise to colored men be submitted, to be voted on separately from the rest of the Constitution.”²⁰⁴

At the Convention itself, the Democratic delegates argued strenuously against any extension of the franchise to blacks.

1865-1869 213 (1913). 1867 N.Y. Laws 194 provided for the time of the election for the convention delegates and the method for selecting convention delegates.

²⁰⁰ DOCUMENTS OF THE CONVENTION OF THE STATE OF NEW YORK, 1867-68, No. 15 (June 28, 1867).

²⁰¹ *Id.*

²⁰² *Id.* at No. 163.

²⁰³ *Id.*

²⁰⁴ *Id.*

Delegate Henry Murphy, who was a sitting senator from Brooklyn, made a motion to retain the existing property qualification in the constitution arguing that it followed the “public sentiment of the state”²⁰⁵ and that extending the franchise “will confound the races, and tend to destroy the fair fabric of democratic institutions, which has been erected by the capacity of the white race.”²⁰⁶ In response, Republican delegate Patrick Corbett claimed:

Hatred for the negro for the last thirty years has been the political capital of the party of which the gentleman from Kings [Mr. Murphy] is an honored member, and it is not to be wondered at that he still desires to be consistent with the record of the past.²⁰⁷

After an extended debate, Murphy’s motion to retain the property qualification was defeated by a vote of 29–78.²⁰⁸

Delegate Abraham Conger went even further than delegate Murphy and proposed that black people not be allowed to vote, unless otherwise determined by the people, and even if authorized to vote, “no person of color shall ever be admitted to participate in or enjoy the functions of sovereignty in this State, so as to hold any executive, judicial or representative office designated in this Constitution.”²⁰⁹ Conger’s various motions to prevent black suffrage were defeated by voice vote.²¹⁰ “All other attempts to continue the discrimination against colored voters met a like fate.”²¹¹

In supporting equal suffrage at the convention, the Republicans did not believe that it should be submitted to the voters as a separate proposal.²¹² Nonetheless, subsequent events convinced Republicans to support a separate vote on suffrage.

Most anything that could go wrong went wrong with the 1867

²⁰⁵ 1 EDWARD F. UNDERHILL, PROCEEDINGS AND DEBATES OF THE STATE OF NEW YORK, HELD IN 1867 AND 1868 IN THE CITY OF ALBANY 236 (1868).

²⁰⁶ *Id.*

²⁰⁷ *Id.* at 258.

²⁰⁸ *Id.* at 349.

²⁰⁹ 1 EDWARD, *supra* note 205, at 481.

²¹⁰ *Id.*

²¹¹ 3 LINCOLN, CONSTITUTIONAL HISTORY, *supra* note 13, at 317.

²¹² Even some supporters of equal suffrage believed that the issue should be submitted separately to the voters. The New York Times which supported universal black suffrage also supported a separate submission. *Suffrage in the Convention--The Question of Separate Submission*, N.Y. TIMES, Jul. 22, 1867.

convention's work. The convention's work product was supposed to be on the 1867 ballot, but the delegates did not finish their work until the end of February in 1868.²¹³ The Republicans fought regularly with each other over the pace of the convention. The Republicans were derided for not swiftly sending the black suffrage issue to the voters in 1867. Disagreements involving the timing of the election postponed the vote on the amended Constitution until the general election of 1869, when legislation was finally passed authorizing the submission to the people.²¹⁴

The law authorizing the vote created four separate submissions to the people. There was a main submission, a judicial article submission, a taxation submission, and the black-suffrage provision.²¹⁵ This was not a benefit to the advocates of black suffrage. The state had started to swing towards the Democrats. The Democrats in 1868 elected a governor.²¹⁶ At the 1869 general election, both houses elected Democratic majorities.²¹⁷ The Democrats united to engage in an all-out front against the suffrage amendment.²¹⁸

²¹³ WILLIS FLETCHER JOHNSON ET AL., *supra* note 63, at 73.

²¹⁴ DEPT. OF STATE, *supra* note 92'.

²¹⁵ *Id.*

²¹⁶ *Official Canvass of the Vote on the State Ticket of New-York*, N.Y. TIMES, Dec. 8, 1868.

²¹⁷ See THE TRIBUNE ALMANAC FOR 1860, at 52–56.

²¹⁸ STEBBINS, *supra* note 199, at 266. See *e.g.* the statement of future New York reform governor Samuel Tilden in 1868. Tilden wrote that “our policy must be condemnation and reversal of negro supremacy On no other issue can we be so unanimous among ourselves. On no other question can we draw so much from the other side and from the doubtful. It appeals . . . to the adopted citizens, whether Irish or German, to all the working men, to the young men just becoming voters.” JIM CROW NEW YORK, *supra* note 29, at 286 (quoting Tilden). For similar remarks by Tilden, see *The Conventions*, N.Y. TIMES, Sept. 23, 1869; see also *State Conventions*, N.Y. TRIBUNE, Sept. 23, 1869. The New York Herald in September of 1869 would write of the Democrats and Tammany Hall:

“Democratic leaders will present to the party a platform averse to negro suffrage and in opposition to the ratification of the fifteenth amendment to the constitution. Here is the nucleus of a big fight, and the Red Indians, with paint and feathers, whoop and tomahawk, are out on the warpath rallying their forces with a determination to carry this State, and then, with the prestige of victory, to summon the democratic tribes from all quarters to the great decisive battle of 1872. Upon the two great national questions—negro suffrage and the ratification of the fifteenth amendment—the Tammany leaders have taken their stand. They are opposed to both measures, and on that opposition they appeal to the support of the democratic masses of this city and State. They have considered the first question in all its bearings, and they are satisfied that they can command an overwhelming

At the election, only the judicial submission passed. The other three all failed. The black suffrage amendment lost by less than the main submission and the tax submission.²¹⁹ It lost by 33,000 votes and garnered 47% of the vote.²²⁰ For the third time in a quarter century, New York voters continued the property qualification imposed on black voters.

Black suffrage did far better than it had in 1860. Thirty-two of New York's sixty counties voted to end the property requirement for blacks.²²¹ Much of western New York voted to end the property requirement.²²² The problem for black suffrage supporters was downstate. The proposal could not overcome opposition in New York City where only 29.6% of the voters supported universal black suffrage.²²³ Additionally, few downstate counties and Hudson Valley counties supported black suffrage.²²⁴ Nonetheless, black suffrage did proceed on other fronts.

THE FIFTEENTH AMENDMENT TAKES EFFECT, DESPITE NEW YORK'S ATTEMPT TO WITHDRAW ITS RATIFICATION

In 1869, with Republican majorities still in place in both houses, the State ratified the proposed Fifteenth Amendment which was designed to end discrimination against black voting. It proclaimed that the "right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude."²²⁵

New York passed the amendment in a strict party-line vote.²²⁶ The Democrats in the State Senate did have one trick up their sleeve. They moved to delay the ratification vote until the New York electorate voted on the state constitutional amendment on

majority of the voters of the city against it.

Democratic Movements for the State Legislature, N.Y. HERALD, Sept. 4, 1869.

²¹⁹ Robert C. Kennedy, *On this Day: March 12, 1870*, N.Y. TIMES, <https://archive.nytimes.com/www.nytimes.com/learning/general/onthisday/harp/0312.html> (last visited April 22, 2018).

²²⁰ *Id.*

²²¹ FIELD, *supra* note 27, at 203.

²²² *Id.* at 202.

²²³ *Id.* at 237. In no other county was support for black suffrage below 30%.

²²⁴ The one exception to this was Dutchess County where universal black suffrage prevailed with 50.4% of the vote. FIELD, *supra* note 27, at 236.

²²⁵ U.S. CONST. amend. XV.

²²⁶ *Albany: Governor Hoffman's Veto*, N.Y. TRIBUNE, April 15, 1869. See also *Albany: Ratification by the Senate of the Fifteenth Amendment*, N.Y. TIMES, April 15, 1869.

universal black suffrage.²²⁷ The motion failed, again on a strict party-line vote.²²⁸ New York became the thirteenth state to ratify the Fifteenth Amendment (with thirty-seven states in the Union, the amendment would not take effect until twenty-eight states approved it).²²⁹

By the time of the 1870 legislative session, however, the Democrats had a majority in both houses. On the first day of the session, they took action to rescind the ratification. Senator William M. “Boss” Tweed proposed a resolution to “withdraw the consent” to the amendment passed in 1869.²³⁰ It passed both houses in one day, again on strict party lines.²³¹ However, this effort to rescind New York’s approval was not considered to be effective by Hamilton Fish, the United States Secretary of State, and New York was included by the Secretary in his determination of the validity of the Fifteenth Amendment.²³² On March 30, 1870, the Secretary of State noted that twenty-nine states (including New York) had passed the Fifteenth Amendment, and it became the law of the land.²³³ President Ulysses S. Grant on March 30, 1870, in a special message to Congress, called the amendment “a measure of grander importance than any other one act of the kind from the foundation of our free Government to the present day.”²³⁴

²²⁷ *Id.*

²²⁸ *Id.*

²²⁹ *Ratification of Constitutional Amendments*, U.S. CONST., <https://www.usconstitution.net/constamrat.html> (last visited Apr. 19, 2018).

²³⁰ John T. Hoffman, *Albany: Opening Proceedings of the Legislature*, N.Y. TIMES, Jan. 5, 1870.

²³¹ *Albany: The First Act of the Democratic Legislature*, N.Y. TIMES, Jan. 6, 1870. See *Albany: The New Officers of the Legislature*, N.Y. TRIBUNE, Jul. 6, 1870. See also JOURNAL OF THE SENATE OF THE STATE OF NEW YORK, 93rd Sess., at 30 (1870).

²³² The issue of whether a state can rescind its ratification of a constitutional amendment remains a significant issue. See Walter Dellinger, *The Legitimacy of Constitutional Change: Rethinking The Amendment Process*, 97 HARV. L. REV. 386 (1983); Brendon Troy Ishikawa, *Everything You Always Wanted to Know About How Amendments Are Made, but were Afraid to Ask*, 24 HASTINGS CONST. L. Q., 545 (1997); See Allison L. Held et al., *The Equal Rights Amendment: Why the ERA Remains Legally Viable and Properly Before the States*, 3 WM. & MARY J. WOMEN & L. 113, (1997); Brenda Feigen Fasteau & Marc Feigen Fasteau, *May a State Legislature Rescind Its Ratification of a Pending Constitutional Amendment?*, 1 HARV. WOMEN’ S L.J. 27, 37 (1978).

²³³ *Black Voting Rights: The Creation of the 15th Amendment*, HARP WEEK, <http://15thamendment.harpweek.com/HubPages/Commentary/Page.asp?Commentary=01Timeline1869> (last visited Apr. 22, 2018). It should be noted that even if New York was not counted among the states approving the amendment, it would still have passed with the approval of twenty-eight states.

²³⁴ *Grant and the 15th Amendment*, NAT. PARK SERV. (Mar. 30, 1870),

He added, "I repeat that the adoption of the fifteenth amendment to the Constitution completes the greatest civil change and constitutes the most important event that has occurred since the nation came into life."²³⁵

Finally, with the federal passage of the Fifteenth Amendment, blacks in New York were able to vote in the same manner as whites.²³⁶

EPILOGUE

Not surprisingly, there would be future events in New York involving black suffrage.

The 1872 Constitutional Commission, which was created to review what might be salvaged from the defeated constitutional referenda of 1869, recommended a revised article II on suffrage in the state constitution. That revision deleted the property requirement for blacks and the longer residency period for blacks and conformed to the Fifteenth Amendment. The revised article was passed by the legislature and overwhelmingly approved by the electorate in 1874.²³⁷

In 1918, the memory of the debate on the Fifteenth Amendment in New York was revisited during the debate on the Eighteenth Amendment on prohibition. The State Assembly leadership was openly considering that the state should hold a referendum on approving the amendment. This was denounced by Governor Charles Whitman. In a statement to the Assembly, he found that a referendum would be of no meaningful value.²³⁸ He added:

It is interesting to note that this plan, plainly a subterfuge, has been proposed once before in the history of the State in its Legislature. This is

<https://www.nps.gov/ulsg/learn/historyculture/grant-and-the-15th-amendment.htm> (last visited Apr. 22, 2018).

²³⁵ *Id.*

²³⁶ See *15th Amendment to the U.S. Constitution*, THE LIBR. OF CONG., <https://www.loc.gov/rr/program/bib/ourdocs/15thamendment.html> (last visited April 22, 2018). See *New York Constitutional Amendment*, BALLOTPEdia, [https://ballotpedia.org/New_York_Constitutional_Amendment,_Amendment_1_\(1874\)](https://ballotpedia.org/New_York_Constitutional_Amendment,_Amendment_1_(1874)) (last visited May 16, 2018).

It took until 1917 before women were authorized to vote in New York State.

²³⁷ See *id.* It passed by a margin of in excess of 2–1.

²³⁸ PUBLIC PAPERS OF GOVERNOR CHARLES SEYMOUR WHITMAN (Mar. 18, 1918) (on file with Harvard University).

not a new idea. It originated with the so-called Tweed minority in the Senate of 1869. It was the way the minority in the Senate, not conspicuous for loyalty to the Federal government, or to the interest of the State, endeavored to beat the Fifteenth Amendment to the Constitution, the amendment which provided that the right to vote should not be denied on account of race, color or previous condition of servitude. The Assembly had ratified the amendment; the resolution to submit it to the people was introduced in the Senate for the acknowledged purpose of defeating this historic measure. . . . It is inconceivable to me that the method devised by William M. Tweed to defeat the provisions of the Constitution of the United States or at least for the purpose of avoiding the performance of a plain duty imposed by that instrument, should be adopted today by the Legislature of New York for the same purpose.²³⁹

The legislature did not submit the amendment to the people, and it was eventually approved by the legislature in January of 1919.²⁴⁰

By the 1960s, New York's actions in rescinding approval of the Fifteenth Amendment were being questioned. Assemblyman Daniel Kelly in 1960 suggested that New York should ratify the Fifteenth Amendment since there were serious questions over New York's official position on this matter.²⁴¹ Starting in that year, Assemblyman Kelly introduced legislation declaring that the legislature had ratified the Fifteenth Amendment.²⁴² Assemblyman Kelly continued to introduce that legislation until 1965, but the legislation never emerged out of committee. The Reverend Henry Hardy Heins of St. Mark's Lutheran Church in

²³⁹ *Id.* It should be pointed out that Tweed did not make the motion for a referendum. The motion was made by Senator John Hubbard who was from central New York, and the motion was simply a stalling tactic by the Democrats to delay passage of the Fifteenth Amendment until such time as the people voted on the 1869 state constitutional submission on universal black voting. It did not require any additional referendum. See *1869 Journal of the Senate of the State of New York* 590 (1869).

²⁴⁰ *18th Amendment to the U.S. Constitution (Prohibition)*, THE LIBR. OF CONG., <https://loc.gov/rr/program/bib/ourdocs/18thamendment.html> (last visited May 16, 2018).

²⁴¹ *Wants N.Y. To Ratify 15th Amendment*, CHI. DAILY DEFENDER, Feb. 18, 1960.

²⁴² See Wolfgang Saxon, *Daniel M. Kelly*, N.Y. TIMES, Oct. 28, 1982, at D00021.

Albany embarked on a campaign to have New York ratify the Fifteenth Amendment.²⁴³ Reverend Heins believed that the 1870 rescission was “less-than-noble” and constituted a “blot on our record.”²⁴⁴

The blot on the record was not erased until March of 1970, on the one hundredth anniversary of the Fifteenth Amendment. First Governor Nelson Rockefeller declared March 30, 1970, as “Fifteenth Amendment Centennial Day.”²⁴⁵ On the same day, the State Senate Rules Committee introduced Senate Resolution 136 to rescind the 1870 disapproval of the Fifteenth Amendment and “reaffirms its support of Article XV of the United States Constitution.”²⁴⁶ The resolution called the 1870 action “regressive” and “an inexcusable blotch on the reputation of the Empire State which for years has been recognized as a national leader in the enactment of progressive legislation in the area of civil rights.”²⁴⁷ The resolution was passed in both houses by voice vote.²⁴⁸ No dissents were heard.

The 1970 resolution may have erased the blotch over New York’s actions on the Fifteenth Amendment, but it does not do anything to erase New York’s record on black voting rights. The fact is that in 1821 New York’s constitutional convention and its voters approved a property qualification for blacks that was not imposed on whites. On three separate occasions over the course of the next-half century, New York’s voters refused to end this blatant discriminatory provision. The arguments in support of this discrimination not only appear to be racist in light of twenty-first century political sensibilities; they were bigoted and hateful even by the standards of mid-nineteenth century America. It is not sufficient to say that many states were as bad as New York. The fact is that New York’s record on black voting rights in the nineteenth century is a blotch that can hardly be erased.

²⁴³ Laymond Robinson, *State Is Haunted by an 1870 Ghost*, N.Y. TIMES, Feb. 28, 1962.

²⁴⁴ *Id.* See also Arvis Chalmers, *He’d Put State Back in the Fold*, KNICKERBOCKER NEWS, Jan. 19, 1962.

²⁴⁵ *Public Papers of Governor Rockefeller*, “Fifteenth Amendment Centennial Day” 775 (1970).

²⁴⁶ S. Res. 136 (1970) (introduced by the Rules Committee).

²⁴⁷ *Id.*

²⁴⁸ Brooks Jackson, *State Moves to Erase Century-Old ‘Blotch’*, ALBANY TIMES UNION, Mar. 31, 1870; *State Senate Rescinds Old Racial Stand*, BUFFALO COURIER EXPRESS, Mar. 31, 1870; Emmet N. O’Brien, *Voting Bill Is Ratified After 100-Year Lapse*, YONKERS HERALD STATESMAN, Mar. 31, 1870.