“Out of order”

Pasting Together the Slavery Debate in the Oregon Constitution

AMY E. PLATT with LAURA CRAY

IT MUST HAVE BEEN oppressively hot in the Marion County Courthouse on the first day of the Oregon Constitutional Convention, especially with the doors shut. The courthouse, a two-story frame building, forty feet wide and sixty-eight feet long, on the corner of Church and State Streets in Salem, was not large enough for the sixty delegates, but still they pushed in almost every day for a month, gavel to gavel, from August 17 to September 18, 1857.

Many of the men were lawyers, most were farmers, and a few were miners and newspapermen. They brought with them their regional issues, about land and transportation and postal routes, and their strong opinions about national issues, namely slavery and religion. Perhaps most impressively, they embraced the tedium of procedure, spending the first day debating bureaucratic minutia and the purpose of the convention itself. Delegate Thomas Dryer, the Whig editor of the Oregonian and until 1856 a loudmouthed opponent of statehood, stood up early to propose the first, but not the last, Faustian solution to a series of existential problems:

We have no organization. We have done nothing. We have met here in obedience to a law convening a convention on this day, at this place, and before we do anything else it strikes me we must organize. . . . It may be, for aught that has yet appeared here, that I am an interloper, as I am a privileged character. . . . I do not object to the appointment of officers at the proper time, but I am now opposed to anything being done, except simply to begin by the recognition of the right of men to sit in this convention. I move that the resolution lie upon the table, and that we proceed to a temporary organization, prior to a permanent one.

Dryer’s call to organize before organizing, and to convene before convening, was rejected by the majority, after which Frederick Waymire wondered aloud how he had managed to find the proper place and the proper time of the convention if he was not meant to be present. One of the most time-consuming debates that morning concerned hiring a doorman. Procedure was important in government meetings. The delegates needed to know who could be on the floor when and during what discussion, when they could speak and for how long, and who was going to police it. The Oregon convention process followed a well-trod procedure, modeled after other states’ conventions; but the burdens of legitimacy and legacy were new to the territorial delegates, and they fretted over the more perplexing rules and possible outcomes. So
THOMAS J. DRYER was the first editor of the Oregonian, a Whig newspaper started in 1850. He was a skilled and acerbic writer who used the newspaper to support the Whig platform and to provoke Oregon’s Democrats, especially Asahel Bush who edited the Statesman. Dryer served as editor until 1861, when he turned the paper over to Henry Pittock.

The debates in the ten (later eleven) small committee meetings, where the most substantive work took place, are mostly hidden from us, particularly when articles and sections came out of those committees and were presented to the Committee of the Whole (all sixty delegates) and approved without much comment — which happened often.7 Without question, this lack of public quibbling was because most of the Oregon Constitution is cribbed from other state constitutions. There was little need for improvement, according to the delegates.8 Indiana’s got top billing, perhaps by virtue of Chester Terry’s foresight to bring its constitution along and pull it from his pocket during the first meeting.9 Ohio, Iowa, and Wisconsin constitutions were similarly plagiarized, leaving only a dozen or more of Oregon’s 185 sections to write from scratch.10 Delegates in seven-member committees hammered out the details and presented their drafts before the Committee of the Whole, where the drafts were read three times at three different sessions for debate and amendment before passage or defeat.11

The accounts of the convention in the Statesman and the Oregonian are invaluable to our understanding of how the state’s constitution was created. Editors Asahel Bush and Thomas Dryer outlined major debates in their original (or close to original) parliamentary format, and they published constitutional articles as they were approved by delegates, often followed by editorials and letters to the editor praising or condemning the outcomes. The accounts were both lively and dull, with readers’ reactions both visceral and pedantic.

Newspapers are not the only written records that illuminate what happened at the Constitutional Convention in late summer of 1857. The delegates wrote to their political allies, and many of their letters remain. A Journal of the Proceedings, minimalist but useful, was published in the 1880s. And draft documents, held by the Oregon Historical Society’s (OHS) Research Library, org. lot 500, box 2, folder 3.
These two views of Article II, Sections 13 to 16, of the draft Oregon Constitution, both held at the Oregon Historical Society, document the manual editing process of drafting the state’s guiding document. Earlier versions of the draft are made legible when viewed on a light box (see facing page). Throughout the Constitutional Convention, delegates reordered and overrode sections by cutting numbered sections and pasting them somewhere else. The sections were renumbered so often that this practice made more sense than writing the entire document over (and over and over) again.
Williams’s more urgent warning calling Iowa’s Bill of Rights a “parody on Delazon Smith, a pro-slavery Democrat who wanted the Oregon Constitution to be “gold refined” and “up with the progress of the age,” like those of Indiana and other states that had Bills of Rights. Smith prevailed despite Williams’s more urgent warning calling Iowa’s Bill of Rights a “parody on the Declaration of Independence, asserting the natural equality of mankind,” which caused confusion for Iowans over the rights of blacks. “Some say,” he said, leaving himself out of the matter, “that it means that negroes are equal with whites. . . . The convention . . . put in a great many grand flourishes about ‘natural and inalienable rights,’ and a great many contend that it favors the equality of the negro race.” He went on to reassure the room that he “was not at all anxious about this matter.”19 His concerns were dismissed and the committee was created.19

What would become Section 31 of Article I is a good example of how the delegates walked the line between white nationalism and the “power inherent in the people” who, according to the first section, “are equal in right.” The key to understanding that apparent paradox is in the preceding words: “We declare that all men, when they form a social compact are equal in right” [emphasis added]. Who are those men forming a compact for equality and inherent power? The debate and revision process of Section 31 elucidates the matter.

In its final version in 1857, Section 31 of the Bill of Rights reads:

White foreigners who are, or may hereafter become residents of this State shall enjoy the same rights in respect to the possession, enjoyment, and descent of property as native born citizens. And the Legislative Assembly shall have power to restrain, and regulate the immigration to this State of persons not qualified to become Citizens of the United States.20

When the Committee of the Whole first took up the section on September 10, this is how it read: “Foreigners who are, or may hereafter become residents of this State shall enjoy the same rights in respect to the possession, enjoyment, and descent of property as native born citizens.”20 In the working draft held at OHS, the second sentence has been added, along with an amendment to insert white ahead of foreigners.22 By the time the September 12 draft was submitted, the word “white” had been wedged into the front of the first sentence.

The handwritten changes made by the delegates on the archival document, from the first reading to the last, are remnants of issues that newly arrived mid-nineteenth-century Oregonians had been wringing their hands over since the 1840s: who could live and work in Oregon; who could own property; would Oregon be a slave state; and how was the government going to control it all? In just two sentences, the fiddling the delegates did with this section of Article I — the word changes, the extra sentence, cutting and pasting the section on free emigration — helped create one of the most racially exclusionary states in the country, with profound consequences for the century and a half that followed.23
OREGON'S BILL OF RIGHTS is Article I of the state constitution, and it was presented to voters in 1857 with thirty-three sections. This version of Section 31, which outlines the property rights of non-citizens, is at least a second or third draft of the original submitted by the Bill of Rights Committee. When it was debated by the Committee of the Whole, delegates moved to add a sentence on the regulation of immigration into Oregon and to modify “foreigners” with the word “white.” Rather than rewrite the entire document, the scribe edited the working version. The numbering of the article changed many times, from 27, to 34, 32, and then to 31 as the delegates added, removed, and reordered sections. In 1970, voters made a final edit and repealed the article, leaving number 31 blank.
Here’s why they did it.

Oregon was pursuing statehood at a time when the nation was intensely divided over the issue of slavery. “Fractured” may be a better word, as factions formed within factions of the many political parties active during the mid-nineteenth century, including the Northern and Southern Democrats, the Copperheads, the Redeemers, the Free-Soilers, the Know-Nothings, the Black Republicans, and the Douglas Republicans. The slavery debate had taken on a distinctly moral tone during the 1840s, when churches began to split over the spiritual consequences of enslaving human beings. That split was reflected in the divisions of political parties as well. In Oregon, people knew about the moral arguments against slavery, and many agreed with them.24 By the time most new settlers arrived in the territory, exclusion laws were already in place and more were being considered; the Oregon Territory seemed a long way from the spiritual damnation awaiting the slave states, so why tempt trouble? The exclusion laws were designed to keep both the moral and the economic complexities of slavery out of Oregon by banning blacks altogether. When it came time to build a constitution, the delegates had to put slavery on the agenda — as Dryer so vehemently pointed out — in order to declare Oregon slave or free in its petition for statehood. But it was prudent to keep the debate short, to avoid reenacting the very arguments some recent emigrants had moved west to avoid. As a result, the question of slavery was considered in answer to “what is best for Oregon?” The inference was economic and political, not moral.25

The absence of slavery in northern and western states did not, unsurprisingly, resolve the race issue. As a result, slavery, and all the legal and moral questions surrounding it, rattled local governments in every state. The Dred Scott ruling in 1857, which declared people with African ancestry ineligible for American citizenship and annulled the possibility of “free territories,” was particularly threatening to northern and western territories. If slaveholders could retain their “property” — that is, their slaves — in slave-free states and territories, then what was the significance of “free”? For territories that aspired to be states, their position had to be strategic. What kind of state was Congress more likely to welcome into the nation — slave or free? With which states and party leaders did new state governments want to align themselves? Figuring out the answers to these questions created subplots within the drama of constitutional conventions.

In Oregon, the slavery debate was a minefield. Although it was the most politically contentious issue on the minds of Oregonians, the word slavery sparsely populates the convention transcripts. Dryer, in his objection to a proposed gag on the slavery debate during the Oregon convention, responded: “I believe, sir . . . that the question of slavery is the all-important question now agitating the public mind, and that any other question which may by inference or implication be necessary to be included in that constitution is lost sight of entirely in consequence of this slavery question.”26 Dryer brought up the question of slavery only five or six times more during the month-long session and was quite able to set the matter aside in order to discuss at length the liability of stockholders. It is perhaps remarkable that the delegates discussed it at all, considering how contentious the subject was. It was like a grenade threatening to go off.

It is not so surprising then, that the most substantial discussions about slavery were about discussing slavery. Delegates first argued over whether to debate the topic, then considered how to deliver the issue to voters. One of Oregon’s most notorious constitutional sections is Article I, Section 35, which excludes free blacks from settling, owning property, or making legal claims or contracts in Oregon. Section 34 bans slavery, which seems like a moral victory until you realize that one of the main strategies of delegates was to write laws — or “make suggestions” to voters — that colluded to keep all blacks out, the free and the enslaved.27 You will not see Sections 34 or 35 in the drafts of Article I held by OHS, because they began as Section 4 under Article XVIII, subject to Section 2 under the same, which referred both matters to voters. Instead, the Bill of Rights made provisions for including

NEAR THE END of the version delegates sent to voters in November 1857 is Article XVIII, “Schedule.” The sections listed are the “what’s next” of the Oregon Constitution — voters were presented with yes or no choices for slavery, black exclusion, and the constitution itself, the results of which would trigger various changes to the document. Section 4 describes the results of a majority “yes” vote for slavery in Oregon.
one or both sections once the voters had decided. Until then, neither law was part of the official document.

Before the convention, Judge Matthew Deady, who served as president of the convention, made it clear that he intended to introduce language making Oregon a slave state. He was likely confident, not only because he was a leader of the Democratic Party, which dominated the proceedings, but also because Oregon had been inhospitable to blacks in every iteration of its government since 1843. But Jesse Applegate, the so-called Sage of Yoncalla, was ready for his old friend. On August 18, Applegate offered a resolution:

Whereas, A large proportion of the delegates to this convention have been chosen by the people with the expressed or implied understanding that the question of slavery would not be decided for them by this body, but submitted to them in such a manner as to enable them to vote upon it as a distinct issue; therefore, Resolved, 1st. The discussion of the subject of slavery by this body is out of place and uncalled for, and only calculated to engender bitter feelings among the members of this body, destroy its harmony, retard its business and unnecessarily prolong its session. 2d. That the committee whose duty it shall be to draft rules for this convention be instructed to declare all debate upon the subject of slavery, either as an abstract proposition or as a mere matter of policy, out of order: 29

It would have been extraordinary if Applegate’s resolution had passed. He surely knew that the majority of Oregonians were not in favor of slavery in the state. By prohibiting its discussion, the delegates essentially would have thrown Deady’s pro-slavery resolution into the trash bin before he had a chance to clear his throat.

Applegate might have believed that he had a better chance with voters than he did with the Democrats, who were taking up all the air in the room. Delazon Smith responded with a slippery declaration that he “would as soon sever my right hand as to vote for a constitution that would either inhibit or adopt slavery here.” Dryer, perhaps dismayed that his prepared admonitions against those who supported slavery would wither into obscurity, accused his colleagues of political cowardice. Other long-winded speeches followed. As the Oregonian reported, under the headline “The N—— Question,” “the resolution was further discussed, ad infinitum . . . until a late hour, when pending the question, the convention adjourned.” 30 The resolution was presented at least twice more, and tabled each time. On August 28, Applegate made his third request to leave the convention. “He wanted to cut this off,” the Statesman reported. His request was denied. So he simply stopped showing up.

And yet, Applegate’s resolution may have had little consequence anyway, as the heretofore inevitable confrontation between pro-slavery Democrats and Free Soilers did not occur. As David Johnson explains in *Founding the Far West,* “those who expected this outcome . . . failed to reckon with the force of party on the opinions of men. Discussion of slavery proved to be beyond the pale; still, differences between Democrats over the question did ramify on the proceedings in other ways — ways unanticipated and, in the end, imperfectly contained.” 31 Dryer’s unfulfilled prediction that slavery would dominate the convention was prescient in at least one important way: the specter of slavery haunted debates about citizenship, suffrage, legal protections, property ownership, emigration, and the economy. For every inclusion of democratic principles, the delegates wrote an iteration of exclusion that reaffirmed the dominance of the men in the room. As a result, the fundamentals of systematic race-based disenfranchisement were encoded into the constitution with barely a need to mention the word slavery.

Deady may not have put into play his resolution on legalized slavery, but he did direct his significant intelligence to help inculcate white supremacy in the rest of the document. His deft fingerprints are on Section 31 of the Bill of Rights, and it is useful to see how the delegates transformed a broad statement about owning property — cribbed from the Iowa State Constitution — into a powerful tool for racial exclusion.

After the Committee of the Whole approved several sections of the Bill of Rights without discussion, the delegates stopped short on Section 31 (then numbered Section 34). The Bill of Rights Committee had a good reason for including a section on the property rights of “residents.” Oregon Territory had recently experienced a massive population growth, largely because of the federal Donation Land Act, passed in 1850. The U.S. government had an interest in filling the West with people, the more the better,
at first to stave off foreign interests and then to control the region’s natural resources, which required the subjugation of Native people. Despite the hundreds of thousands of people who hoofed the Oregon Trail, however, Oregon was still a few thousand short of the minimum 60,000 non-Native people it needed to meet the requirements of statehood. Section 31 both welcomed newcomers and sorted them into “eligible” and “non-eligible” for enfranchisement — a process that reflected national models of citizenship regulation. Governments controlled the expansion of a nonwhite, non-Protestant electorate by creating categories of U.S. residents — categories that shifted depending on which immigrant migration was taking place.

For territories seeking statehood, such as Oregon, those categorizations could hinder efforts to reach the requisite population numbers. For that reason, when Dryer suggested changing “residents” to “citizens,” his proposal was rejected for being too restrictive. But perhaps sensing the danger of opening Oregon’s land wealth to any foreigner who happened to step over the state line, Deady suggested inserting “white” ahead of “foreigners.” Approved. Catching on, W.W. Bristow recommended that the legislature be in charge of “restraining” and “regulating” noncitizens — with consideration for people who “intended to become citizens” — before they got too comfortable in Oregon. Adopted. The field of likely landholders had been narrowed.

When the committee moved on to Article II, Section 1 — “All elections shall be free and equal” — Deady voiced his angst over a troubling linguistic issue: just what did “free” mean? Smith assured him it did not mean “Chinese or n[-----]s.” The delegates had a fit of introspection about their own power as they contemplated building a workaround of federal naturalization laws by relying on the more generous “state citizenship,” which, as defined by the delegates, required only six months to a year of residency in the state by people intending to become U.S. citizens (which could take as long as five years). David Logan voted against increasing the state residency requirements for foreigners — despite having been tainted or “burned with Know-Nothingsim,” an anti-immigrant, nationalist political party he once associated with. That only white foreigners were eligible for citizenship was a selling point for most of the delegates. As Dryer warmed up to a diatribe against foreigners attempting to “control him” through the ballot, Asa Lovejoy broke in with a voice of practicality: he “did not know why those who might come here afterwards were not to have the same privileges as those that were here now. If we want immigration here, should we not hold out inducements?” The territory taxed foreigners. Should they not have representation? “Representation and taxation should go together,” he concluded. With that, the ghosts of the American Revolution closed the debate for the day.

It is significant that the debates over property ownership, race, and citizenship were entwined that Thursday in September, and that the delegates needed to find a way to resolve their conflicting inclinations before they could move on. Oregon needed immigrants, not just for the statehood headcount but also to construct its towns and cities and harvest the crops. Many delegates recognized this necessity, which kept the exclusion clause from expanding to include Chinese, “Kanakas,” or “even Indians.” Still, there was a difference between tolerating Natives and immigrants and enfranchising them; and although the precariousness of their hold on the culture, politics, and economies of the state must have been lurking at the back of their minds, the delegates would not have questioned their right — even their duty — to take on the responsibility of creating a government to strengthen their own dominance. Cultural superiority is a heady intoxicant.

When the suffrage debate resumed on Friday, Deady spoke up, questioning the “power of a state to establish a different rule of naturalization from that of congress . . . it would be better to conform to it. To do so would be to strip those who oppose foreigners of their strongest argument against them.” He had “no sympathy,” the Statesman reported in its September 15, 1857, transcript, “with those who oppose foreigners — his father was a foreigner, and every drop of blood in his veins was of foreign origin.” The record of Deady’s mind at work during the convention, particularly, both confounds and illuminates the cultural and political forces in play in mid-nineteenth-century Oregon. Significantly, Deady and his fellow delegates held apparent contradictory thoughts about the benefits of democracy — as a sacred compact between government and citizenry and as a tool to contain and exclude in the name of progress, or the “common good,”
or God and Country. The delegates did not invent any of the principles of Oregon’s democracy; they just needed to tinker with them a little to fit their own interests. When they adopted language and ideas from other constitutions, they were already comfortable with concepts such as racial exclusion and limited suffrage, in large part because those limitations did not apply to their white, male, foreign ancestors. Deady and his cohorts merely updated the definitions of citizen and resident to suit Oregon’s demographics.

Significantly, articles such as 31, 34, and 35 helped legitimize the notion of “free men” and “natural rights” and “equality” scattered throughout the rest of the document, by explicitly identifying the people who were forming the “social compact” outlined in Article 1 — they were men, they were white, and they were eligible to vote on the passage of the state constitution. The disenfranchised were not meant to be represented in the idealism of the Oregon Constitution, but they were, of course, subject to it. Ironically, the ability of the delegates to dislocate the female and nonwhite population from the Bill of Rights is what made them confident enough to include so much political idealism in the document — the same idealistic language disenfranchised groups have used since to assert constitutional equality and to subsequently vote Article 31 out of the Constitution decades later.42

September 18, 1857, the last day, was a long day. Delegates spent the morning rehashing disagreements, including on the exclusion laws and slavery, in order to get their opinions on the record. Then Smith requested to “detain the convention” so he could “review the whole instrument briefly.” What followed was a staggeringly long personal reflection, including more than one call to his Revolutionary forefathers. “If I can live to contribute to the accomplishment and realization of such a destiny I shall feel that I have not lived in vain; that when I look for the last time upon things sublunary I shall anticipate nothing more than a nominal existence of slavery within the boundaries of this state for a time to come, not extending practically beyond a few body or household servants. If the majority of the people decide otherwise, it will then, in my judgement, become the policy of the people of the future state of Oregon to put in requisition those influences and causes which shall divert labor from the over-populated and over-burdened cities of the Atlantic coast to this country, to divert some portion of the tide of immigration from the European states to this continent to the Pacific coast to supply the wants and necessities of the country.”43

Despite Smith’s promise that he “had no threats to make” regarding the slavery question, he made an extraordinary case for a slave-state Oregon here, although with some careful politicking. His prediction that immigrant labor would be necessary to make up for absent slaves tapped into the fear that foreign populations would overwhelm Oregon. He explained, a pro-slavery Oregon would have so few slaves people would barely notice them. But it was completely up to you, voters.45

The speech ended, and the delegates voted on the final draft of the constitution: thirty-five yeas, ten nays, and fifteen absents. Dryer voted nay; Applegate was absent. Eventually, fifty-two delegates would sign the Oregon Constitution. Their final act was to approve the design of the state seal, and Deady adjourned the convention, sine die. Oregon voters, comprising white men who were either territorial citizens or who planned to be, passed the constitution on November 9, 1857, and voted “no” on slavery and “yes” to black exclusion.46 Until that vote, the delegates were uncertain their work would be accepted by the public.47 But it was, and the document was amended to reflect the inclusion of Sections 34 (slave-free state) and 35 (black exclusion) and sent to the U.S. Congress, along with a legislative memorial for statehood. Oregon’s entry into the Union was held up for over a year while Congress considered the consequences of adding to its ranks congressmen from a slave-free state that refused to accept black residents.48 Statehood was granted on February 14, 1859, when President Buchanan signed the bill passed by the House of Representatives two days earlier.

The draft documents in the Oregon Historical Society archives provide important insights into the minds of the 1857 delegates. The inserts and cross-outs indicate moments of tension, where delegates hesitated and pushed back against one another, often along party lines. Those debates tell us much about their worldviews, how they differed, and the critical points of agreement — mainly, the superiority of white men and the need to facilitate that superiority far into the future. That in itself may not be a revelation; but it is instructive to see how the delegates managed to create a state, suited to their interests and prejudices, with a bureaucratic system we still use.

If a majority of the people of Oregon upon the second Monday of next November say they will have slavery; if they say that they desire to introduce slave labor into this country, that they desire to have constitutional authority for so doing, I shall acquiesce in that decision. As a sequence of that decision, I shall anticipate nothing more than a nominal existence of slavery within the boundaries of this state for a time to come, not extending practically beyond a few body or household servants. If the majority of the people decide otherwise,
ON NOVEMBER 9, 1857, eligible Oregonians voted to ratify the proposed Oregon state constitution. This undated preliminary abstract of votes includes a breakdown for precincts in Multnomah, Washington, and Clackamas counties and corresponds closely with the final election results. Votes recorded here were for or against the proposed constitution, whether slavery would be permitted, and whether free blacks would be allowed in the state. Note that all three counties voted overwhelmingly to oppose slavery and free blacks in the state.

THIS DETAIL OF Article XVIII, “Schedule,” Section 4, of the preliminary draft of the Oregon Constitution shows a provision for handling the outcome of a vote against permitting free blacks in the state: “No free negro or mulatto, not residing in this state at the time of the adoption of this constitution, shall ever come reside or be within this state, or hold any real estate or make any contract or maintain any suit therein.”
CONSTITUTION BY CUT AND PASTE

by Laura Cray

IN THE SUMMER OF 2018, the Oregon Historical Society (OHS) hosted an exhibit that displayed pages of the Oregon state constitution recently restored by the Oregon State Archives. The exhibit provided a perfect opportunity for OHS to revisit and digitize its Oregon Constitutional Convention Records, 1857–1859 (Mss 1227), which contain a draft of the Oregon State Constitution. The collection is particularly interesting because it reveals the process and the people behind our state’s guiding document. It is also a reminder that the constitution in its ratified form was part of a long, deliberative process.

The draft pages are dynamic documents that reflect the physical work required to meld competing interests and contrasting visions of what Oregon as a state should and could be. Passages are crossed out, words inserted, and pages are cut apart and pasted together in new orders as revisions passed from committee to the general assembly. These drafts became, in a sense, an analog “track-changes,” revealing which sections were subject to debate and which passed through without revision.

Digitizing this collection offered a number of technical challenges in capturing all of the layered information the pages contain. Where possible without damaging the documents, pages with layered content were imaged multiple times to capture every layer. In instances where the glue remained intact, however, the lower layer of writing is not captured within the digital facsimiles, which are available on OHS’ Digital Collections website (www.digitalcollections.ohs.org). Visitors to the OHS Research Library are able to read that layered information by placing the materials on a lightbox, revealing the writing of earlier versions obscured below.

Often societies’ foundational documents are presented in their ratified form, obscuring the alternate forms that could have been as well as the debates and power dynamics that shape their final outcome. To that end, drafts of the Oregon constitution are an important addition to OHS Digital Collections because they provide a tangible connection to the process of Oregon statehood.

LEFT: Laura Cray, Digital Services Librarian at the Oregon Historical Society, holds the Preamble of the draft Oregon state constitution held at the Oregon Historical Society.
NOTES


4. Ibid., 58–64.

5. Dryer’s amusing speech on the importance of a recorder and roll call is worth repeating: “Although I have been accused of belonging to a ‘dark lantern party,’ and have done many things in the dark which I would not like to have published, yet I do not wish to do anything in the dark here. I wish to go straight upon the record, and to see others toe the mark also. I wish every man and every party to carry its own sins. At present, I don’t know where I belong among the various parties. It is probable that Waymire ‘thought we might as well take old constitutions, that the people were familiar with, as to try to strike out into something new, that they knew nothing about. If he was sent here to form a new Bible he would copy the old one.” Carey, Oregon Constitution and Proceedings, 99.

6. “Dark lantern parties” were not yet active in Oregon, but Dryer is referring to the American Party, members meet in secret. It is likely that Dryer’s use of the phrase reflects a net increase. As of 2019, seven sections have been repealed and thirteen approved following the convention. The sections are numbered to 46, but the legislature removed repealed amendments without renumbering them. The increase from 35 to 41 is deceptive, because it reflects a net increase. As of 2019, seven sections have been repealed and thirteen have been added. To muddle the math even more, voters passed two Section 36s in 1914 (Prohibition and abolition of the death penalty) and Section 36a (more Prohibition) in 1916. All three were repealed. To muddle the math even more, voters passed two Section 36s in 1914 (Prohibition and abolition of the death penalty) and Section 36a (more Prohibition) in 1916. All three were repealed.

7. For a list of the ten standing committees, see W.H. Byars, Journal of the Constitutional Convention of the State of Oregon (Salem, Ore.: State Printer, 1857), 62. A committee for the Bill of Rights was added, after much debate, on August 19, 1857, bringing the total to eleven.

8. On August 20, the Statesman reported that Waymire “thought we might as well take old constitutions, that the people were familiar with, as to try to strike out into something new, that they knew nothing about. If he was sent here to form a new Bible he would copy the old one.” Carey, Oregon Constitution and Proceedings, 99.


13. In an article titled “American Eloquence” in an 1854 edition of the United States Democratic Review, an unidentified author praises the power of speech: “What a beneficent, blessed influence is that of a fearless, manly, patriotic eloquence, when employed on the side of truth and righteousness!” (p. 41). In a call for improved education on the art of oration, the author outlines the “characteristics of our national eloquence”: great boldness, vividness and force, feelings, fervor, and clearness and directness. In some instances, the oration served as an ode to itself “whether the views taken by them be right or wrong views, coincident with the nature and reality of things in the case or not, they are usually vivid views — conceived with much strength and clearness — with little haze and mist surrounding them — plain — well defined to the eye of the speaker’s mind — and operating on his mental vision with all the power of living and visible realities” (p. 43). United States Democratic Review 34 (1854) 40–52. https://babel.hathitrust.org/cgi/pt?id=cco.319240769985;view=supp;seq=49 (accessed February 1, 2019).

14. Section 34, banning slavery, and 35, creating black exclusion laws, were added to Article 1 later, after voters approved them following the convention. The sections are numbered to 46, but the legislature removed repealed amendments without renumbering them. The increase from 35 to 41 is deceptive, because it reflects a net increase. As of 2019, seven sections have been repealed and thirteen have been added. To muddle the math even more, voters passed two Section 36s in 1914 (Prohibition and abolition of the death penalty) and Section 36a (more Prohibition) in 1916. All three were repealed. The complete list of amendments can be

15. Burton and Grade, “A Legislative History of the Oregon Constitution of 1857, Part I,” 474. Burton asks the question in reference to the voters’ understanding of the proposed document, in that the approval of the draft by the public is more significant than the delegates’ intentions when writing it. This analysis is useful because it makes room for the unintentional consequences of legislative actions. The application of laws has more power than the intent of their authors.

16. Section 1 of the Bill of Rights reads: “We declare that all men, when they form a social compact are equal in right: that all power is inherent in the people, and all free governments are founded on their authority, and instituted for their peace, safety, and happiness; and they have at all times a right to alter, reform, or abolish the government in such manner as they may think proper.”


18. Ibid., 101–104.

19. George Williams was a chief justice of the territorial supreme court and a Free-Soil Democrat. He opposed slavery in Oregon, and he is perhaps most famous for ruling in 1852 in favor of former slave Robin Holmes, who was suing for the release of his enslaved children from white settler Nathaniel Ford in Holmes v. Ford. As a result, he carried the stain of “abolitionism” within the Democratic Party in Oregon, alienating him from the tight knit party leaders known as the Salem Clique. In fact, Williams had no objection to slavery — where it was already legal — but he believed in competitive free labor and desired Oregon be slave-free. He eventually joined the Republican Party, as he became more closely aligned with their anti-slavery principles. Read more in David A. Johnson, Founding the Far West: Californians, Oregonians, and Nevada, 1840–1890 (Bereley: University of California Press, 1992), 149–150, and R. Gregory Nokes, Breaking Chains (Corvallis: Oregon State University Press, 2013).


22. In the OHS draft, the number of Section 34 has been changed at least four times, and still it does not document the final change to Section 31. Sections were shuffled around, combined, or separated out throughout the convention process, and the Committee on Enrolment and Arrangement of the Constitution altered the document accordingly.

23. Oregon was not the first territory or state to pass exclusion laws. As Eugene Berwanger describes in his book on the expansion of slavery in America, the majority of Oregon delegates were agrarian midwesterners (Middle West), who brought their ideas about slave-free labor and racial prejudice with them to the Northwest. The exclusion laws they passed in the 1840s were copies of those written in Indiana, Illinois, Iowa, and other states. Berwanger argues that “Negros,” even free men and women, were inexorably connected to slavery, and so became unwelcome representatives of the pitfalls of the institution. Banning slavery was not enough to keep the argument out of Oregon; all black people had to be removed and prevented from emigrating, particularly if they were looking for refuge from slave states. Oregonians on the whole were not sympathetic to runaways and did not care to re-litigate Dred Scott. When Oregon became the only state to be accepted into the Union with racial exclusion laws in its constitution, it became the legal embodiment of one of the most insidious elements of the national slavery debate: the refusal to recognize the basic humanity of black Americans. By embracing a so-called middle ground, Oregon explicitly embraced white nationalism and encoded it into its most important document. As black migrants during the mid-nineteenth century headed West, they went to California to take advantage of the economic boom and to Washington and Vancouver Island to settle along the ports, but most left Oregon alone. They left it alone in part because black emigrants found better economic opportunities in urban centers (Oregon was agrarian and black men and women were not eligible for land grants), but also because Oregon had a reputation for the persecution of nonwhites. The few black residents who persevered in Oregon faced extraordinary prejudice. Eugene Berwanger, The Frontier against Slavery (Champaign: University of Illinois Press, 1967); reprint 2002), 78–96.

24. Jesse Applegate, who had a tendency to use his correspondence to morally instruct his friends, ended one of his many letters to Matthew Deady with an eloquent rebuke of slavery: “It is not right to indulge prejudices of creed or race. It is necessary to God’s justice that all races of men should be endowed with faculties sufficient to secure their happiness here and hereafter, and I hope and believe that in His own good time, all will be restored to the primitive Eden. Excuse me. I find I cannot write you a long letter as I intended — my body is weary and my mind ill at ease.” Letter from Applegate to Deady, April 23, 1865, Matthew P. Deady Papers, Mss 48, [hereafter Deady Papers] box 2, folder A109-124, OHS Research Library.

25. Dryer says this early on in the convention: “If you, being a pro-slavery man, can convince me that slavery is best for Oregon, you shall have the benefit and advantage in the reported proceedings before my constituents.” Carey, Oregon Constitution and Proceedings, 83. He elaborated on this idea before the territorial legislature, as reported in the Oregonian, January 24, 1857.
26. Carey, Oregon Constitution and Proceedings, 79. As reported in Byars, Journal of the Constitutional Convention: Applegate was a witty and constant correspondent with most of the state’s leading intellectuals and political leaders. He could be caustic, but many of his letters are earnest exchanges of ideas and friendship. In a letter to his then-friend Matthew Deady, dated April 13, 1862, in the midst of the Civil War, he wrote: “I accept to the full and in its plainest sense the declaration of man’s equality as this great truth as enunciated in our declaration of independence and the Bible also, and as our system recognizes the whole people as the source of political power, it would be retrograde policy to narrow its base, let us rather act in obedience of an enlarged philanthropy and labor for the good of all, and the improvement of all, hoping that which we know to be good will also prove to be wise.” Letter from Applegate to Deady, Deady Papers, box 2, folder A109-124, OH5 Research Library.

27. During the 1850s, Oregon was primarily a Democratic Party state, which at the time tended toward preserving slavery in the South and was cautiously open to its spread to the West. The majority of the delegates were Democrats. But many Oregonians were intensely anti-slavery, most for economic reasons but others for philosophical and religious reasons, among them delegates Dryer and Jesse Applegate. Both men had influence and kept the anti-slavery debate alive — Dryer, through his newspaper, and Applegate, through his well-connected friendships with people such as Matthew Deady. For a good overview of Oregon’s Democratic Party in nineteenth-century Oregon, see Barbara S. Mahoney’s The Salem Clique: Oregon’s Founding Brothers (Corvallis: Oregon State University Press, 2017), Eugene Berwanger describes the anti-slavery sentiment in Oregon and the roles of key figures such as Dryer and Deady in The Frontier Against Slavery: Wester Anti-Negro Prejudice and the Slavery Extension Controversy (Urbana: University of Illinois Press, 1967, reprint 2002), 82–96. Many of Applegate’s letters to the states leading political figures are held by the OH5 Research Library in various collections, mainly in the Applegate Family Papers, Mr. 137.


29. Carey, Oregon Constitution and Proceedings, 79, as reported in Byars, Journal of the Constitutional Convention: Applegate was a witty and constant correspondent with most of the state’s leading intellectuals and political leaders. He could be caustic, but many of his letters are earnest exchanges of ideas and friendship. In a letter to his then-friend Matthew Deady, dated April 13, 1862, in the midst of the Civil War, he wrote: “I accept to the full and in its plainest sense the declaration of man’s equality as this great truth as enunciated in our declaration of independence and the Bible also, and as our system recognizes the whole people as the source of political power, it would be retrograde policy to narrow its base, let us rather act in obedience of an enlarged philanthropy and labor for the good of all, and the improvement of all, hoping that which we know to be good will also prove to be wise.” Letter from Applegate to Deady, Deady Papers, box 2, folder A109-124, OH5 Research Library.

30. Carey, Oregon Constitution and Proceedings, 33. Voters outlawed slavery in Oregon Country in 1843; as a result, slavery was variously tolerated in Oregon, but not made the law of land. Subsequent laws were intended to eradicate it altogether, primarily in support of black exclusion. Voters seemed inclined to embrace exclusion over slavery, which was made abundantly clear in the 1857 vote. Greg Nokes, “Black Exclusion Laws in Oregon,” The Oregon Encyclopedia, https://oregonencyclopedia.org/articles/exclusion_laws/x_hg5AMBKBq0 (accessed February 28, 2019).

31. Ibid., 79–86.

32. Ibid., 203, 208, 209.


34. The Oregon Donation Land Act was passed by Congress in 1850. It confirmed title to settlers who claimed land under Oregon’s provisional land acts and granted land grants to new settlers of 320 acres, 640 to married couples — women held title — until 1855 (the 1850 statute had an 1853 sunset, so a second statute was passed extending it to 1857). The law also excluded nonwhites, with the exception of the children of white men and their Native wives. William G. Robbins, “Oregon Donation Land Act,” The Oregon Encyclopedia, https://oregonencyclopedia.org/articles/or Oregon_donation_land_act/x_fX6GI6VfYkHq0 (accessed February 7, 2019).

35. The Northwest Ordinance, passed by the Confederation Congress in 1787, established the process for admitting new states west of the Ohio River (among its many other provisions). The act set the minimum population of “free inhabitants” for a new state at sixty thousand. To read the complete document, see “A Century of Law Making for a New Nation,” Library of Congress, https://memory.loc.gov/cgi-bin/ ampage?collidos=loc&fileName=025/loc25 dbrecNum=352 (accessed February 15, 2019). Carey refers to the Senate’s concern over Oregon’s small population during Congressional deliberations in 1858 (Carey, 45).

36. Carey, Oregon Constitution and Proceedings, 33. Voters outlawed slavery in Oregon Country in 1843; as a result, slavery was variously tolerated in Oregon, but not made the law of land. Subsequent laws were intended to eradicate it altogether, primarily in support of black exclusion. Voters seemed inclined to embrace exclusion over slavery, which was made abundantly clear in the 1857 vote. Greg Nokes, “Black Exclusion Laws in Oregon,” The Oregon Encyclopedia, https://oregonencyclopedia.org/articles/exclusion_laws/x_hg5AMBKBq0 (accessed February 28, 2019).

37. Ibid.

38. Carey, Oregon Constitution and Proceedings, 318. The Know-Nothings would have approved of highly restrictive immigration and citizenship laws.

39. Ibid., 320.

40. During the debate over the exclusion clause, Waymire objected to including “Chinamen” to the exclusion list. “So far as his constituents were concerned, he believed they would like to have a lot of them [Chinese] among them. They made good washers, good cooks, and good servants,” ibid., 362.

41. Ibid., 322.

42. The May 1970 voter’s pamphlet reads: “The reason for proposing this amendment is to eliminate from the Constitution of Oregon a provision which, according to legal authorities provided by the sponsor of the resolution in the Oregon Legislature, is invalid because of a conflict with the Constitution of the United States.” Despite the many civil rights victories that had preceded the 1970 election, the repeal of Article 31 was no mere bookkeeping matter — 34% (one in three) of Oregon voters pushed the “do not repeal” button. Ballotpedia, https://ballotpedia.org/Oregon_Removal_of_Law_Prohibiting_Immigration_and_Citizenship_Laws (accessed February 15, 2019).

43. Ibid., 386, 397.

44. Ibid., 392.

45. Carey, Oregon Constitution and Proceedings, 392. Smith would go on to win one of Oregon’s first Senate seats. In retrospect, his final speech in the convention reads like a campaign speech. The final tallies for the November 1857 vote were as follows: in favor of the constitution: yes, 7,195; no, 3,215. In favor of slavery: yes, 2,645; no, 7,728; in favor of free blacks in Oregon: yes, 1,081; no, 128 free blacks, 177 Indians). The numbers reflect the effect of the Oregon Donation Land Act on immigration to Oregon, but efforts by census takers to measure the Indian population in the state were woefully incompetent. In some cases, counties were listed as having a single Native resident. U.S. Census Bureau, Comparative Table of Population, 1860, https://www2.census.gov/library/publications/decennial/1860a/1860a0-02.pdf (accessed February 15, 2019). By the 1860 census, Oregon was recorded at 52,465 residents (52,460 whites; 128 free blacks; 177 Indians). The numbers reflect the effect of the Oregon Donation Land Act on immigration to Oregon, but efforts by census takers to measure the Indian population in the state were woefully incompetent. In some cases, counties were listed as having a single Native resident. U.S. Census Bureau, Comparative Table of Population, 1860, https://www2.census.gov/library/publications/decennial/1860/population/1860a-29.pdf (accessed February 15, 2019).

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48. Oregon statehood was held up for other reasons as well, including the issue of its small population and its distance from Washington, D.C.