

THE KLAN'S CONSTITUTION

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INTRODUCTION

The Ku Klux Klan is America's oldest and most prominent terrorist organization. For over 150 years, groups calling themselves the Ku Klux Klan have committed uncounted murders, bombings, kidnappings, and assaults, as well as innumerable acts of intimidation and threats, including night riding and cross burning, all in the name of white supremacy and preserving white rule.

What may be surprising, and is certainly less well known, is that throughout its existence the Klan has defined its mission as a defense of the United States Constitution.¹ In the 1870s, when Klan members whipped and murdered thousands of African Americans to sabotage Reconstruction, they said they were acting to defend the Constitution.² In the 1920s, when Klan members fought to keep Jews and Catholics out of the country and out of positions of influence, they said they were fighting for the Constitution.³ In the 1960s, when Klan members bombed churches and murdered civil rights workers, they said they were working to defend the Constitution.⁴ Klan members today continue to say they are fighting to restore the Constitution, even as they march arm in arm with neo-Nazis to denounce Jewish control of the government and media.⁵

1. See KU KLUX KLAN, PRESCRIPT OF THE ORDER (1868), *reprinted in* 5 AM. HIST. MAG. 3, 5 (1900) (declaring the Klan's mission to "protect and defend the Constitution of the United States") (hereinafter "PRESCRIPT OF THE ORDER"); see WILLIAM JOSEPH SIMMONS, THE KLAN UNMASKED 46 (1923) (declaring that the organization was "assembled around the Constitution of the United States, to safeguard its provisions, advance its purposes, and perpetuate its democracy.").

2. See PRESCRIPT OF THE ORDER, *supra* note 1 (declaring the Klan's mission to "protect and defend the Constitution of the United States"); *infra* notes 53–73 and accompanying text.

3. See WILLIAM JOSEPH SIMMONS, THE KLAN UNMASKED 46 (1923) (declaring that the organization was "assembled around the Constitution of the United States, to safeguard its provisions, advance its purposes, and perpetuate its democracy."); *infra* notes 173–184 and accompanying text.

4. See, e.g., Flyer, MY FELLOW AMERICAN, HERE ARE TWENTY REASONS WHY YOU SHOULD IF QUALIFIED, JOIN, AID AND SUPPORT THE WHITE KNIGHTS OF THE KU KLUX KLAN OF MISSISSIPPI (n.d.) (declaring that the Klan acts "to defend our Constitutional Republic"); *infra* notes 247–266 and accompanying text.

5. See *Frequently Asked Questions*, THE KNIGHT'S PARTY, <https://kkk.bz/frequently-asked-questions/>.

A large body of scholarship has examined the Klan movement in great detail, but it has not taken seriously the Klan's expressions of devotion to the Constitution. Hundreds of books have documented the Klan's history, violence, and significance—exploring the role of the Klan in different periods, in different states, the role of women in the Klan, the Klan's religious views, resistance to the Klan, and the FBI's fight against the Klan, among many other subjects—but none contains any analysis of what the Constitution has meant to the Klan.⁶ To the extent that published histories mention that the Klan has expressed its mission as a defense of the Constitution, these expressions have been dismissed as meaningless rhetoric.⁷ Typical is *White Terror: The Ku Klux Klan Conspiracy and Southern Reconstruction* by Allen Trelease, the most in-depth examination of the early history of the Klan, which dismisses the Klan's constitutional mission by stating that “[i]t would be hard to imagine a greater parody than this on the Ku Klux Klan as it actually operated.”⁸

It is easy to see why Klan expressions of devotion to the Constitution have been so readily dismissed. Although the Constitution protects the rights of all citizens to the equal protection of the law, the Klan has engaged in widespread violence and terrorism outside the constraints of law to deny African Americans and others their right to full participation in American life. As Trelease puts it, the Klan's asserted dedication to the Constitution cannot be taken seriously because the Klan has been “the embodiment of

6. For a discussion of the second Klan using social movement theory, see RORY MCVEIGH, *THE RISE OF THE KU KLUX KLAN: RIGHT-WING MOVEMENTS AND NATIONAL POLITICS* (2009); for a discussion of the religious orientation of the Klan, see KELLY J. BAKER, *GOSPEL ACCORDING TO THE KLAN: THE KKK'S APPEAL TO PROTESTANT AMERICA, 1915–1930* (2011); for a discussion of the Klan in South Carolina, see JERRY L. WEST, *THE RECONSTRUCTION KU KLUX KLAN IN YORK COUNTY, SOUTH CAROLINA, 1865–1877* (2002); for a discussion of the Klan in Alabama, see GLENN FELDMAN, *POLITICS, SOCIETY, AND THE KLAN IN ALABAMA, 1915–1949* (1999); for a discussion of the current Klan, see PATSY SIMS, *THE KLAN* (1996); for a discussion of women in the Klan, see KATHLEEN M. BLEE, *WOMEN OF THE KLAN: RACISM AND GENDER IN THE 1920S* (1991); for a discussion of the role of movies in the Klan, see TOM RICE, *WHITE ROBES, SILVER SCREENS: MOVIES AND THE MAKING OF THE KU KLUX KLAN* (2015).

7. See generally ALLEN W. TRELEASE, *WHITE TERROR: THE KU KLUX KLAN CONSPIRACY AND SOUTHERN RECONSTRUCTION* (1971).

8. *Id.* at 17.

lawlessness and outrage . . . and it set at defiance the Constitution and laws of the United States.”⁹

Although Trelease was of course correct that the Klan has long acted to undermine the Constitution, the Klan's dedication to the Constitution is worth examining both for what it says about the Klan and what it reveals about America's constitutional culture. For 150 years, dedication to the Constitution has been central to how the Klan has conceived its mission and how it has justified the widespread violence it has perpetrated. Its expressed devotion to the Constitution has served to recruit hundreds of thousands of Klan members who have been willing to kill and die in the name of the Constitution.

This article provides the first comprehensive examination of the constitutional ideology that has guided the Klan throughout its long and bloody history. As it shows, the Klan has long been devoted to the belief that the United States is fundamentally a white nation, that the nation's founders were dedicated to white rule, and that the Constitution should be understood as the source of white power. That ideology has long served as a powerful justification for violence.¹⁰ From its inception in 1868 until today, the Klan has described the violence it has perpetrated as patriotic in nature, undertaken not out of racial hatred, but as necessary to defend the nation and the true meaning of the Constitution.¹¹ Declaring that whiteness is a foundational national principle embodied in the Constitution, the Klan has always found adherents who consider racist violence to be acts of the highest patriotism.¹²

9. *Id.*

10. *See, e.g.*, 1 JOINT SELECT COMM. 42D CONG., REPORT TO INQUIRE INTO THE CONDITION OF AFFAIRS IN THE LATE INSURRECTIONARY STATES, MADE TO THE TWO HOUSES OF CONGRESS FEBRUARY 19, 1872, at 7 (1872) (testifying that the Klan carried out its objectives through whipping and murder), all volumes of the Joint Select Committee's Report *available at* <http://onlinebooks.library.upenn.edu/webbin/metabook?id=insurrection1872> (hereinafter “JOINT SELECT COMMITTEE REPORT”); *id.* at 39 (testifying that Klan violence was undertaken “for the ultimate good, to save the country”); *id.* at 48 (summarizing grand jury evidence that demonstrated that the Klan carried out its purposes through violence); *id.* at 75 (testifying that the Klan sought to enforce obedience to the law, as conceived by the Klan, through whipping and murder).

11. *Id.*

12. RICHARD MAXWELL BROWN, STRAIN OF VIOLENCE: HISTORICAL STUDIES OF AMERICAN VIOLENCE AND VIGILANTISM 95–96, 132 (1979); *see also* Lisa Cardyn, *Sexualized Racism/Gendered Violence: Outraging the Body Politic in the Reconstruction South*, 100 MICH. L. REV. 675, 794 (2002).

The Klan has gained prominence whenever white Americans have feared that their dominant status and power are threatened.¹³ Although the threats to white dominance have changed, the Klan has remained steadfast in asserting that, in its original and true meaning, the Constitution protects white rule:

As Part I examines, the Klan was established during the Reconstruction era to fight to preserve white power in the face of emancipation.¹⁴ In declaring that its mission was to “uphold and defend the Constitution of the United States as it was handed down by our forefathers in its original purity,” the Klan expressed its dedication to the antebellum Constitution and its opposition to the Civil War Amendments.¹⁵

As Part II discusses, the Klan was revived in 1915 to address the new threat to the power of white Protestants posed by the influx of Catholics, Jews, and other immigrants.¹⁶ The revived Klan asserted that only Anglo-Saxons are capable of appreciating the nation’s constitutional values, while other people are dangerously ill-suited for self-government under the Constitution.¹⁷

As Part III shows, the Klan experienced another resurgence in the 1950s and 1960s when the civil rights movement challenged segregation.¹⁸ The Klan argued that the civil rights movement was the pawn of international Communists, who sought to dismantle segregation and thereby destroy the Constitution.¹⁹

As Part IV discusses, in the wake of the defeat of segregation, some white supremacists in the 1970s and 1980s—both within the Klan and outside the Klan—lost faith in the Constitution as a source of white power

13. See Joshua Rothman, *When Bigotry Paraded Through the Streets*, ATLANTIC (Dec. 4, 2016).

14. 2 JOINT SELECT COMMITTEE REPORT, NORTH CAROLINA, *supra* note 10, at 422.

15. *Id.*

16. *Ku Klux Klan*, HISTORY, <https://www.history.com/topics/ku-klux-klan>.

17. AMERICANS, TAKE HEED! SCUM O’ THE MELTING POT *reprinted in* KLU KLUX KLAN: HEARINGS BEFORE THE COMMITTEE ON RULES 67th Cong. 126 (1921).

18. See John Powell, *The Klan Un-Klandestine*, NATION 255 (Sept. 29, 1951).

19. See JAMES O. EASTLAND, WE’VE REACHED ERA OF JUDICIAL TYRANNY: AN ADDRESS BEFORE THE STATE-WIDE CONVENTION OF THE ASSOCIATION OF CITIZEN’S COUNCILS OF JACKSON, MISSISSIPPI 5 (Dec. 1, 1955).

and began to argue that whites should seek to create a separate ethnic state.²⁰ The white supremacist movement today is comprised of two principal factions: reactionary groups that seek to restore white rule within the existing power structure United States, and revolutionary groups that seek to establish a separate white nation. Dedication to the Constitution represents the dividing line between the two factions.

As this history reveals, the Klan's constitutional ideology has always drawn on mainstream American constitutional thought. From before the time of the nation's founding, many Americans considered liberty and self-government to be the unique products of a British heritage that other peoples did not and could not appreciate.²¹ In the *Dred Scott* case, the Supreme Court endorsed the widely held view that the Constitution was written by and for white people, and that belief persisted long after the Civil War, despite the adoption of 14th Amendment and the elevation of racial equality as a constitutional value.²² In the 1920s, when the Klan campaigned that Jews and Catholics were unfit for the Constitution, a majority of the members of Congress agreed that the maintenance of constitutional government required maintaining the dominance of the nation's white ethnic stock.²³ In the 1950s and 1960s, the Klan was united with mainstream white organizations, which agreed that the Constitution protects white rule.²⁴

The history of the Klan illustrates how constitutional rhetoric can be used to advance a narrow conception of American identity. In each era, the Klan has sought to recruit and mobilize members by portraying threats to

20. John Drabble, *From White Supremacy to White Power: The FBI, Cointel Pro-White Hate, and the Nazification of the Ku Klux Klan in the 1970s*, 48 AM. STUD. 49, 50 (2007).

21. As John Higham has written, Americans "had always proclaimed orderly self-government as the chief glory of Anglo-Saxons—an inherited capacity so unique that the future of human freedom surely rested in their hands." JOHN HIGHAM, *STRANGERS IN THE LAND: PATTERNS OF AMERICAN NATIVISM 1860–1925*, at 137 (2d ed. 1977); *see also* ROGERS M. SMITH, *CIVIC IDEALS: CONFLICTING VISIONS OF CITIZENSHIP IN U.S. HISTORY* 86 (1997) (declaring that the American revolutionary leaders believed that their "Anglo-Saxon heritage . . . bestow[ed] a special awareness of men's natural liberties and also unique capacities for self-governance.").

22. *Dred Scott v. Sandford*, 60 U.S. 393, 403 (1857); *see infra* notes 74–103 and accompanying text.

23. *See infra* notes 185–202 and accompanying text.

24. *See infra* notes 246–266 and accompanying text.

white power in nationalist terms, not as threats to a racial group but as attacks on the nation itself.²⁵ That appeal has succeeded because many whites consider themselves prototypically American and experience threats to their status as threats to the nation.²⁶ Mobilizing to protect this nationalist vision, Klan members have naturally rallied around the Constitution, which Americans have long considered the supreme national symbol and embodiment of national values.²⁷ To those who think of the United States as a white nation, defending the Constitution means defending whiteness.²⁸

25. The history of Klan illustrates group threat theory, which posits that members of culturally and politically dominant groups develop hostility to subordinate groups in response to perceived threats posed to the dominant group's interests. Group threat theory has its origin in Herbert G. Blumer's *Race Prejudice as a Sense of Group Position*, 1 PAC. SOC. REV. 3 (1958), and has been developed by Lawrence Bobo and others. For a review of the literature on group threat theory, see Lincoln Quillian, *Prejudice as a Response to Perceived Group Threat: Population Composition and Anti-Immigrant and Racial Prejudice in Europe*, 60 AM. SOC. REV. 586 (1995).

26. Empirical work by Elizabeth Theiss-Morse has shown that Americans who consider themselves prototypical Americans are more likely to identify their characteristics and values to be national values and perceive criticisms of those values as attacks on the nation. See ELIZABETH THEISS-MORSE, WHO COUNTS AS AN AMERICAN? THE BOUNDARIES OF NATIONAL IDENTITY 73, 77, 92–93 (2009).

27. See HANS KOHN, AMERICAN NATIONALISM: AN INTERPRETIVE ESSAY 8 (1961) (“The American Constitution is unlike any other. It represents the lifeblood of the American nation, its supreme symbol and manifestation. It is so intimately welded with the national existence itself that the two have become inseparable.”); Thomas C. Grey, *The Constitution as Scripture*, 37 STAN. L. REV. 1, 3 (1984) (stating that the Constitution “has been, virtually from the moment of its ratification, a sacred symbol, the most potent emblem (along with the flag) of the nation.”); see generally SANFORD LEVINSON, CONSTITUTIONAL FAITH 11 (1988) (comparing devotion to the Constitution and devotion to religious faith).

28. This pattern—in which a threat to the dominance of a racial or ethnic group is understood in nationalist terms and motivates a movement that articulates its message in predominately constitutional terms—has recurred frequently in American history and can be seen in nativist movements, in the Tea Party movement, and in Christian nationalist movements, among others. See Jared A. Goldstein, *How the Constitution Became Christian*, 68 HASTING L.J. 259 (2017). For an explanation of the pattern in the history of American nativism, see Jared A. Goldstein, *Unfit for the Constitution: Nativism and the Constitution from the Founding Fathers to Donald Trump*, 20 U. PENN. J. OF CON. L. 489 (2018). For an explanation of the pattern in the history of the militia movement, see Jared A.

I. THE RECONSTRUCTION-ERA KLAN AND THE CONSTITUTION: 1866-1877

The Ku Klux Klan emerged in the immediate wake of the Civil War, when white southerners sought to preserve white rule in the face of federal occupation and the imposition of a legal regime based on racial equality.²⁹ Launching a campaign of violence across the former Confederacy, the Klan declared that it was fighting to “uphold and defend the Constitution of the United States as it was handed down by our forefathers in its original purity.”³⁰ This declaration expressed the belief that the United States had been founded as a white nation and that the Constitution was intended to protect white rule. As this Part shows, the Klan drew on beliefs in the fundamental whiteness of the nation and the Constitution, beliefs that long predated the Civil War and that persisted long after the war.

A. *The Birth of the Ku Klux Klan*

The end of the Civil War in 1865 brought massive disruptions in the social structures of southern life.³¹ Slavery was abolished and African Americans became citizens entitled to equal rights.³² After several states adopted Black Codes to restrict the freedom of African Americans, Congress responded by enacting the Reconstruction Acts of 1867, which imposed military control over the Southern states until they adopted new state

Goldstein, *To Kill and Die for the Constitution: Nullification and Insurrectionary Violence*, reprinted in *NULLIFICATION AND SECESSION IN MODERN CONSTITUTIONAL THOUGHT* (Sanford Levinson, ed.) (2016).

29. Andrew F. Lang, *Republicanism, Race, and Reconstruction: The Ethos of Military Occupation in Civil War America*, 4 *J. CIVIL WAR ERA* 559, 582–89 (2014).

30. 2 *JOINT SELECT COMMITTEE REPORT, NORTH CAROLINA*, *supra* note 10, at 422.

31. A discussion of the scale of changes brought about by the war and the history of scholarly attempts to describe them can be found in ERIC FONER, *RECONSTRUCTION: AMERICA'S UNFINISHED REVOLUTION, 1863-1877*, at xvii–xxv (1988).

32. See U.S. CONST. amend XIII, XIV, XV; Donald G Nieman, *Bondage, Freedom & the Constitution: The New Slavery Scholarship and its Impact on Legal Historiography: Emancipation and the New Conception of Freedom: From Slaves to Citizens: African-Americans, Rights Consciousness and Reconstruction*, 17 *CARDOZO L. REV.* 2115, 2116–17 (1996).

constitutions that granted equality to black citizens.³³ Congress also disbanded state militias composed primarily of former Confederate soldiers and authorized the creation of new state militias to enforce Reconstruction, many of which were composed of black soldiers.³⁴ Congress created the Freedmen's Bureau to offer various forms of assistance to African Americans, including the creation of schools for black children.³⁵ Under the control of the Republican Party, southern states gave the vote to African American men, disenfranchised certain classes of former Confederates, and elected black candidates to office.³⁶

33. Act of Mar. 11, 1868, ch. 25, 15 Stat. 41 (1868); THIRTY-NINTH CONGRESS, SESS. II. at 428, An Act to provide for the more efficient Government of the Rebel States, Ch. 153, (Mar. 2, 1867), available at <https://www.loc.gov/law/help/statutes-at-large/39th-congress/session-2/c39s2ch153.pdf>; Act of FORTIETH CONGRESS, SESS. I., at 2, An Act supplementary to an Act entitled "An Act to provide for the more efficient Government of the Rebel States," passed March second, eighteen hundred and sixty-seven, and to facilitate Restoration, Ch. 6 (Mar. 23, 1867), available at <https://www.loc.gov/law/help/statutes-at-large/40th-congress/session-1/c40s1ch6.pdf>; Act of Fortieth Congress, Sess. I. at 14, An Act supplementary to an Act entitled "An Act to provide for the more efficient Government of the Rebel States," passed March second, eighteen hundred and sixty-seven and the Act supplementary thereto, passed on the twenty-third day of March, eighteen hundred and sixty-seven, Ch. 30 (July 19, 1867), available at <https://www.loc.gov/law/help/statutes-at-large/40th-congress/session-1/c40s1ch30.pdf>. For a discussion of the Black Codes, see Paul Finkelman, "Let Justice Be Done, Though the Heavens May Fall": *The Law of Freedom*, 70 CHI.-KENT. L. REV. 325 (1994), and Gary Stewart, *Black Codes and Broken Windows: The Legacy of Racial Hegemony in Anti-Gang Civil Injunctions*, 107 YALE L.J. 2249 (1998).

34. FORTIETH CONGRESS, SESS. I. at 28, A Resolution for the Relief of the Destitute in the Southern and Southwestern States, (Mar. 30, 1867), available at <http://legisworks.org/sal/15/stats/STATUTE-15-Pg28c.pdf>; see FONER, *supra* note 32; Otis A. Singletary, *The African American Militia During Radical Reconstruction*, in BROTHERS TO THE BUFFALO SOLDIERS: PERSPECTIVES ON THE AFRICAN AMERICAN MILITIA AND VOLUNTEERS 1865–1917, at 19–33 (Bruce A. Glasrud, ed. 2011).

35. THIRTY-NINTH CONGRESS, SESS. I. at 174, An Act to continue in force and to amend "An Act to establish a Bureau for the Relief of Freedmen and Refugees" and for other Purposes, Ch. 200 (July 16, 1866).

36. FONER, *supra* note 32, at 324; Eric Foner, *Rooted in Reconstruction: The First Wave of Black Congressmen*, NATION (OCT. 15, 2008),

Thus, within a remarkably short time, white southern men lost their status from the top of a racial and gender hierarchy where they had nearly absolute control over the bodies and destinies of African Americans, to one where African American men were granted political and legal equality, patrolled the states in armed militias, had the right to vote, and were elected to office, while many white men had been disenfranchised. And all of these changes had been imposed by force against white southerners as a result of the Confederacy's defeat.

Unwilling to accept their diminished status, white men across the South formed secret societies to resist Reconstruction.³⁷ Again and again, the founders of these groups explained that they were formed to address the "alarm" and "humiliation" experienced by white men at the prospect of racial equality.³⁸ The first of these groups, the Ku Klux Klan, was formed in May 1866 by six former Confederate Army officers in Pulaski, Tennessee.³⁹ Although originally organized as a social club, by early 1867, the group had begun to be involved in vigilante activities against African-Americans and Republicans.⁴⁰ Inspired by the Klan's example, other groups calling themselves the Ku Klux Klan soon formed across the South, as did similar groups bearing other names—Knights of the White Camelia, the Invisible

<https://www.thenation.com/article/rooted-reconstruction-first-wave-black-congressmen/>.

37. See, e.g., *Alarm Among the Whites*, in 2 DOCUMENTARY HISTORY OF RECONSTRUCTION: POLITICAL, MILITARY, SOCIAL, RELIGIOUS, EDUCATIONAL & INDUSTRIAL 1865 TO THE PRESENT TIME 271 (Walter L. Fleming, ed., 1907) (hereinafter "DOCUMENTARY HISTORY OF RECONSTRUCTION").

38. *Id.* at 338, 339 (declaring that the Klan arose because of the increased status of African Americans, the decreased status of whites, and a belief that the government placed blacks over whites); *id.* at 340 (declaring that southerners expected slavery to be abolished but "had no idea . . . that their slaves were to be made their political equals."); *id.* at 351 (declaring that the Knights of the White Camelia was founded "to relieve the White Race from the humiliating condition to which it has lately been reduced in this Republic."); *id.* at 358 (declaring that the White League was founded because of "the most absurd inversion of the relations of race.").

39. TRELEASE, *supra* note 7, at 3–4. As the founders of the group later explained, "Ku Klux" came from the Greek word *kuklos*, meaning circle or band, and "Klan" added an alliterative touch. *Id.*

40. *Id.* at 4, 10–11.

Empire, and the White Brotherhood.⁴¹ These groups were widely recognized as the militant wing of the Democratic Party, fighting for political control of the South against the Republicans, the ruling party in Congress, which adopted the Reconstruction laws and supported civil rights for emancipated African Americans.⁴²

Although the secret societies fighting for white rule went by many different names, they had a common name for what they were fighting for: they called it the Constitution. The 1868 Prescript of the Ku Klux Klan, the organizing document of the Tennessee Klan, proclaimed that the organization was formed to “protect and defend the Constitution of the United States,” and it required all new members to swear that they were “in favor of Constitutional liberty.”⁴³ The South Carolina Klan likewise declared that members were “on the side of justice, humanity, and constitutional liberty as bequeathed to us in its purity by our forefathers.”⁴⁴ The other groups comprising the Klan movement used nearly identical language.⁴⁵

41. FONER, *supra* note 32, at 425. Although these groups were not all called the Ku Klux Klan, they have long been grouped together as part of the “Klan” movement because of their common mission and methods. See 2 DOCUMENTARY HISTORY OF RECONSTRUCTION, *supra* note 39, at 327.

42. See *General Forrest’s Explanations*, in 2 DOCUMENTARY HISTORY IN DOCUMENTARY HISTORY OF RECONSTRUCTION, *supra* note 39, at 342 (explaining that the Klan supported the Democrats); *Influence in the Elections*, in *id.*, at 370 (describing the Klan as a secret society to support the Democratic Party); TRELEASE, *supra* note 7, at xlvii.

43. *Organization and Principles of the Ku Klux Klan*, in 2 DOCUMENTARY HISTORY OF RECONSTRUCTION, *supra* note 39, at 347, 348–49.

44. 5 JOINT SELECT COMMITTEE REPORT, SOUTH CAROLINA, *supra* note 10, at 1686 (reprinting Klan Constitution for South Carolina).

45. The oath of the Invisible Empire required members to swear: “I promise and swear that I will uphold and defend the Constitution of the United States as it was handed down by our forefathers in its original purity.” 2 JOINT SELECT COMMITTEE REPORT, NORTH CAROLINA, *supra* note 10, at 422; see also *The ‘76 Association*, in 2 DOCUMENTARY HISTORY OF RECONSTRUCTION, *supra* note 39, at 355 (declaring that it was established “to uphold[] the principles of the United States Constitution as established and interpreted by its framers.”). The Knights of the White Camelia, for instance, declared its goal to be the “preservation of those grand principles” of “the Government of the United States, as originally adopted” and required members to declare support for “the maintenance of the Laws and Constitution as established by the Patriots of 1776.” THE CONSTITUTION AND THE

With their proclaimed dedication to the Constitution, Klan groups perpetrated a massive wave of vigilante violence against African Americans and white Republicans.⁴⁶ Klan groups typically employed violence during night-riding, in which small bands of hooded and robed members came unannounced to the houses of black residents in the middle of the night and accused them of various crimes.⁴⁷ Klan violence often took the form of whipping and flogging but frequently also often involved branding, mutilating, shooting, hanging, and drowning their victims.⁴⁸ Klan chapters organized lynch parties to carry out vigilante justice.⁴⁹ Although the Klan targeted any behavior that conflicted with white supremacy, the main object of Klan violence was to intimidate potential black voters.⁵⁰ In addition to night-riding, Klan violence often involved shows of force, such as by surrounding polling places with armed supporters.⁵¹ The Klan assassinated black and white officials who supported Reconstruction.⁵² It targeted teachers at the newly formed black schools.⁵³ Estimates of the scale of Klan violence have proved impossible to verify. By one estimate made in 1872, the Klan victimized more than 23,000 people from 1867 to 1872.⁵⁴ A later estimate puts the number of those killed at 50,000.⁵⁵ Contemporary historians

RITUAL OF THE KNIGHTS OF THE WHITE CAMELIA 8, 21 (Walter Fleming ed. 1868) (hereinafter "CONSTITUTION OF THE WHITE CAMELIA").

46. TRELEASE, *supra* note 7, at xlvii, 28.

47. *Id.*

48. *Id.* at 29.

49. *Id.* at 30.

50. *Id.* at xlvii.

51. *Id.* at 175.

52. *Id.* at 90, 102, 116.

53. *Id.*

54. See *The Ku-Klux Laws*, NEW NAT'L ERA, Aug. 8, 1872, at 1; *Startling Facts*, EVENING EXPRESS, Aug. 22, 1872, at 1. For another contemporaneous assessment, see JOB. E. STEVENSON, LET US PROTECT THE PEOPLE IN THE ENJOYMENT OF LIFE, LIBERTY, AND PROPERTY, AND IMPARTIAL SUFFRAGE IN PEACE, SPEECH OF HON. JOB E. STEVENSON, OF OHIO, DELIVERED IN THE HOUSE OF REPRESENTATIVES APRIL 4, 1871, at 32 (F. & J. Rives & Geo. A. Bailey 1871) (estimating 15,000 victims of Klan violence).

55. JOHN EDWARD BRUCE, THE BLOOD RED RECORD: A REVIEW OF THE HORRIBLE LYNCHINGS AND BURNING OF NEGROES BY CIVILIZED WHITE MEN IN THE UNITED STATES, AS TAKEN FROM THE RECORDS 20 (1901).

have largely abandoned the attempt to estimate the number of victims and simply say that there were thousands.⁵⁶

The Ku Klux Klan ceased to exist as an organization even before the end of Reconstruction.⁵⁷ In April 1871, Congress enacted the Ku Klux Klan Act, which authorized the President to suppress private insurrection and made it a federal crime to conspire to deprive anyone of civil rights.⁵⁸ In 1871 and 1872, the United States launched a vigorous campaign of enforcement of the Act, which involved the arrest of over fifteen hundred Klansmen.⁵⁹ The enforcement effort succeeded in destroying the Klan as an effective organization, although the Klan persisted in diminished capacity for decades.⁶⁰

Despite the demise of the Klan, violent opposition to Reconstruction increased. Throughout the South, white rifle clubs were established to intimidate black voters and to show resolve to return to white rule.⁶¹ In Mississippi and elsewhere, clubs calling themselves the “White League” were created to get rid of “all bad and leading negroes.”⁶² Armed groups of white southerners instructed black Mississippians that they would be shot if they attempted to vote.⁶³ In 1875, a campaign of violence targeted rallies by the ruling Republican Party and shot black school teachers, church leaders, and Republican officials.⁶⁴

When the federal government chose not to intervene, Democratic forces were emboldened.⁶⁵ The campaign of violence succeeded. By the end of 1874, most states in the former Confederacy had returned to Democratic Party control, and by the end of 1877, all of the former Confederate states

56. See ASHRAF H. A. RUSHDY, *THE RACE OF LYNCHING* 61 (2012).

57. TRELEASE, *supra* note 7, at 399–418.

58. Ku Klux Klan Act of 1871, Pub.L. 42–22, 17 Stat. 13 (Apr. 20, 1871).

59. TRELEASE, *supra* note 7, at 399–418.

60. *Id.* at 418. In 1875, the Supreme Court ruled that the Act was unconstitutional in criminalizing private acts of violence committed because of the victim’s race, where there was no evidence that such violence was specifically directed at restricting voting rights. *United States v. Harris*, 106 U.S. 629, 643–44 (1883).

61. See *Rifle Clubs and Artillery Companies*, in 2 DOCUMENTARY HISTORY OF RECONSTRUCTION, *supra* note 39, at 407–409.

62. FONER, *supra* note 32, at 558.

63. *Id.* at 561.

64. *Id.* at 559–60.

65. *Id.* at 561–62.

were under Democratic control.⁶⁶ That year also marked the end of federal occupation of the South and federal Reconstruction efforts.⁶⁷ Under the control of white conservatives, southern states proceeded to institute a variety of mechanisms for disenfranchising African Americans and removing any semblance of equal treatment.⁶⁸ Vigilante violence had succeeded in ensuring white rule across the South.⁶⁹

B. *The Klan's Constitutional Mission*

The Klan's first organizational document, known as the Prescript of 1868, declares that the group was dedicated "to protect and defend the Constitution of the United States."⁷⁰ Exactly what the Constitution meant to the Klan can be seen throughout the Prescript. It required new members to declare that they were "in favor of a white man's government in this country" and "opposed to negro equality, both social and political."⁷¹ It required new members to declare that they were "in favor of maintaining the Constitutional rights of the South," which meant that they were "in favor of the re-enfranchisement and emancipation of the white men of the South, and the restitution of the Southern people to all their rights, alike proprietary, civil, and political."⁷² And it required new members to affirm the conviction that they were entitled to use violence if they believed they had been deprived of their constitutional rights.⁷³

66. *Id.* at 419–20.

67. *See generally* C. VANN WOODWARD, REUNION AND REACTION: THE COMPROMISE OF 1877 AND THE END OF RECONSTRUCTION (1966); *see also* FONER, *supra* note 32, at 564–601.

68. *See* JAMES A. MORONE, THE DEMOCRATIC WISH: POPULAR PARTICIPATION AND THE LIMIT OF AMERICAN GOVERNMENT 189 (1998) (discussing grandfather clauses, literacy tests, poll taxes, white primaries, and other methods that "effectively gutted the Fifteenth Amendment"); J. MORGAN KOUSSER, THE SHAPING OF SOUTHERN POLITICS: SUFFRAGE RESTRICTION AND THE ESTABLISHMENT OF THE ONE-PARTY SOUTH, 1880–1910 (1974); ROGERS M. SMITH, *supra* note 22, at 383.

69. TRELEASE, *supra* note 7, at 420.

70. PRESCRIPT OF THE ORDER, *supra* note 1, at 5.

71. *Id.* at 21.

72. *Id.* at 22.

73. *Id.* at 22 (requiring new members to declare that they "believe in the inalienable right of self-preservation of the people against the exercise of arbitrary and unlicensed power").

As numerous Klan expressions of the era make clear, Klan members were committed to remain true to what they believed was the original understanding of the Constitution as envisioned by the nation's founders.⁷⁴ The Invisible Empire, a Klan group operating in North Carolina, required members swear to "uphold and defend the Constitution of the United States as it was handed down by our forefathers in its original purity."⁷⁵ This plainly meant that the Klan sought to remain true to the antebellum Constitution as it was adopted in 1789—and not the Constitution as it had been altered through the Reconstruction Amendments. In testimony before Congress in 1871, Klan members repeatedly confirmed that the Klan's expressed dedication to the Constitution simply meant that "we were opposed to the amendments to the Constitution," as one Klan leader put it.⁷⁶ Or as another Klan member testified, the Klan was dedicated to the Constitution "as it was," not "as it is," which was understood to mean that Klan members were bound to fight to fight for the "overthrow of the Republican party and injure it all they could."⁷⁷

The Klan thus supported what its members frequently referred to as the "old Constitution," not the Constitution that they believed had been debased through the adoption of the Reconstruction Amendments. This can be seen in a newspaper interview given in 1868 by Nathan Bedford Forrest, the former Confederate General who became the Klan's first Grand Wizard.⁷⁸ Forrest declared that the Klan was dedicated to protecting the

74. See, e.g., *Oath of the Invisible Empire*, in 2 JOINT SELECT COMMITTEE REPORT, NORTH CAROLINA, *supra* note 10, at 422.

75. PRESCRIPT OF THE ORDER, *supra* note 1, at 68; *Oath of the Invisible Empire*, in 2 JOINT SELECT COMMITTEE REPORT, NORTH CAROLINA, *supra* note 10, at 422. Another organization in the Klan orbit, the '76 Association, a Louisiana group that sought to enforce white supremacy through violence and intimidation, declared its dedication to the old Constitution, stating that it was established "[t]o uphold the principles of the United States Constitution as established and interpreted by its framers." *The '76 Association*, in 2 DOCUMENTARY HISTORY OF RECONSTRUCTION, *supra* note 39, at 355.

76. 2 JOINT SELECT COMMITTEE REPORT, NORTH CAROLINA, *supra* note 10, at 384 (1872).

77. STEVENSON, *supra* note 56, at 14 (quoting Testimony of Thomas Willeford) (Feb. 20, 1871).

78. *Special Correspondence, Cincinnati Commercial (Aug. 28, 1868)*, in 13 TESTIMONY TAKEN BY THE JOINT SELECT COMMITTEE TO INQUIRE INTO THE CONDITION OF AFFAIRS IN THE LATE INSURRECTIONARY STATES: MISCELLANEOUS AND FLORIDA 32, 33 (1871).

original Constitution against the radicals who were attempting to destroy it: "I loved the old government in 1861; I love the old Constitution yet. I think it the best government in the world if administered as it was before the war. I do not hate it; I am opposing now only the radical revolutionists who are trying to destroy it."⁷⁹

In fighting for the "original" Constitution, the Klan frequently claimed that it remained true to the nation's Founding Fathers, while its opponents had betrayed that legacy.⁸⁰ Members of the Klan claimed to be the true patriots, who held true to what the Klan group called the "sacred prerogatives vouchsafed to us by the Constitution."⁸¹ According to the Klan, Republicans had debased the nation's founding principles by disfranchising whites, adopting the Reconstruction Amendments and Reconstruction Acts, and attempting to impose racial equality in violation of the principles of the nation's founders.⁸² In declaring its dedication to the Constitution "as originally adopted by our fathers," the Klan declared it a foundational principle that "our Republic was established by white men, for white men alone and that it never was in the contemplation of its founders that it should fall into the hands of an inferior and degraded race."⁸³ Equal rights for African Americans, the Klan declared, would violate the nation's founding principles.⁸⁴

Klansmen bolstered the conviction that the Constitution was made exclusively for white people with the claim that African Americans were incapable of participating in constitutional government. At the initiation

79. *Id.* Although Forrest later claimed that certain aspects of the interview misrepresented his views, he did not challenge the portion quoted above. *See id.* at 35.

80. In doing so, the Klan engaged in what has recently been described as "popular originalism"—the use of constitutional argument by political movements that claim to be based on the original meaning of the Constitution. *See generally* Rebecca E. Zietlow, *Popular Originalism? The Tea Party Movement and Constitutional Theory*, 64 FLA. L. REV. 483 (2012); Jared A. Goldstein, *The Tea Party Movement and the Perils of Popular Originalism*, 53 ARIZ. L. REV. 827 (2011).

81. CONSTITUTION OF THE WHITE CAMELIA, *supra* note 47, at 26.

82. *See id.* at 8, 26.

83. *Id.*; *see also* 2 JOINT SELECT COMMITTEE REPORT, NORTH CAROLINA, *supra* note 10, at 422 (1872) (testifying that the nation's founders had intended to "forever maintain and contend that intelligent white men shall govern this country.").

84. CONSTITUTION OF THE WHITE CAMELIA, *supra* note 47, at 26.

ceremony of one Klan group, the leader declared that only whites had the capacity to create and sustain advanced civilizations, while members of other races “have remained in a state of complete barbarity.”⁸⁵ Not only were attempts to bestow equal citizenship on African Americans doomed to fail, the Knights explained, attempts to create political equality violated the foundational principles upon which the United States had been created: it amounted to “an invasion of the sacred prerogatives vouchsafed to us by the Constitution, and a violation of the laws established by God himself.”⁸⁶ African Americans must be excluded from participating in government, the Klan argued, to protect the Constitution and to allow constitutional democracy to function.

The Klan’s contemporary opponents understood exactly what the Klan meant in declaring its dedication to the Constitution. In 1871, the United States tried numerous Klan members in South Carolina for participating in violence against black militia members.⁸⁷ In the course of the trial, federal prosecutors pointed to the Klan’s expressed dedication to the Constitution to demonstrate that the Klan was a subversive organization:

Gentlemen, what does that mean—“constitutional liberty as bequeathed to us by our forefathers?” Let us dwell for a moment upon it. Our forefathers framed a Constitution which the Supreme Court of the United States has declared, over and over again, recognized slavery. . . . That Constitution, the Supreme Court of the United States said, meant this, that the black man had no rights that the white man was bound to respect. . . . [T]hat is what is meant in this first Section of the Ku Klux Constitution. It meant more; it meant that we stand upon the Constitution in that respect, *as it was*, not as *it is now*—not with the thirteenth, fourteenth and fifteenth amendments in it. . . . We trample upon these amendments of

85. See *Charge to Initiates, The Knights of the White Camelia*, in 2 DOCUMENTARY HISTORY OF RECONSTRUCTION, *supra* note 39, at 349, 351.

86. *Id.* at 352.

87. See PROCEEDINGS IN THE KU KLUX TRIALS IN COLUMBIA, S.C., UNITED STATES CIRCUIT COURT, NOVEMBER TERM 1871, at 431–33 (1872) (hereinafter “PROCEEDINGS IN THE KU KLUX TRIALS”); see also TRELEASE, *supra* note 7, at 399–415; Kermit L. Hall, *Political Power and Constitutional Legitimacy: The South Carolina Ku Klux Klan Trials, 1871–1872*, 33 EMORY L.J. 921, 924 (1984).

the Constitution, and we intend to destroy and defeat them. That is what this Ku Klux oath meant.⁸⁸

As the prosecutor well-recognized, the Klan's dedication extended only to what it considered the pure, original Constitution, unsullied by the Civil War amendments.

The Klan was not alone in seeing the fight over Reconstruction as a fight over the Constitution. The Klan's chief rival was the Union League, also known as the Loyal League, which organized clubs throughout the South to promote equal citizenship and to recruit African Americans to the Republican cause.⁸⁹ Like the Klan, the Union League articulated its mission in constitutional terms, declaring that its object was "to preserve liberty and the Union of the United States of America; [and] to maintain the Constitution thereof and the supremacy of the laws."⁹⁰ Unlike the Klan, The Union League declared loyalty to the new constitutional values incorporated into the Fourteenth Amendment, its members pledging "to secure equal civil and political rights to all men under the Government."⁹¹ Union League members thus pledged to seek the "complete ascendancy of the true principles of popular government—equal liberty, education and elevation of the workingmen of the nation, and the security of all by means of the elective franchise."⁹²

The battle for Reconstruction thus pitted two different visions for the nation against each other, each expressed in constitutional terms. On the one hand, the Union League fought for a nation whose dedication to racial equality had recently been embraced through new constitutional amendments. On the other hand, the Klan fought for the maintenance of white rule and the

88. PROCEEDINGS IN THE KU KLUX TRIALS, *supra* note 89, at 431–33 (statement of United States District Attorney Daniel T. Corbin).

89. See TRELEASE, *supra* note 7, at xlvi; *Constitution of the Union League of America*, in 2 DOCUMENTARY HISTORY OF RECONSTRUCTION, *supra* note 39, at 7.

90. TRELEASE, *supra* note 7, at xlvi.

91. See *Constitution of the National Council of the Union League of American*, Art. II, in 2 DOCUMENTARY HISTORY OF RECONSTRUCTION, *supra* note 39, at 6.

92. See 4 JOINT SELECT COMMITTEE REPORT, SOUTH CAROLINA *supra* note 10, at 951. By 1867 most black voters belonged to the League and associated groups, which sought to carry out its commitment to racial equality by promoting black suffrage and constructing black schools and churches. FONER, *supra* note 32, at 283, 285.

denial of equal rights, which the Klan understood to be supported by the antebellum Constitution, the Constitution “as originally adopted by our fathers.”⁹³

C. The Deep Roots of the Klan’s Constitutional Vision

The Klan’s belief that the Constitution protects white rule was hardly novel and, at the time, was far from radical. It had deep roots in American history going back to the nation’s founding, and it remained a dominant belief in the South throughout the Reconstruction era.

As originally adopted, the Constitution makes no mention of race, although it contained many protections for the institution of slavery.⁹⁴ Yet, from the time of the nation’s founding, Americans identified the values enshrined in the Constitution as the product of an English heritage that many believed other peoples did not and could not appreciate.⁹⁵ Thomas Jefferson, for instance, appealed to Americans’ “Saxon” heritage, which he declared established in Britain “that system of laws which has so long been the glory

93. *Id.*

94. *See, e.g.*, U.S. CONST. art. I, § 2 (the Three-Fifths Clause); *id.* art. I, § 9 (the Slave Trade Clause); *id.* art. IV, § 2 (the Fugitive Slave Clause); *see generally* GEORGE WILLIAM VAN CLEVE, A SLAVEHOLDERS’ UNION: SLAVERY, POLITICS, AND THE CONSTITUTION IN THE EARLY AMERICAN REPUBLIC (2010) (noting how slavery was fundamental to the emergence of the United States as its own country and how slavery was protected by the Constitution); PAUL FINKELMAN, SLAVERY AND THE FOUNDERS (2d ed. 2001) (examining the attitudes of the founding fathers towards slavery); PAUL FINKELMAN, THE CENTRALITY OF SLAVERY, IN AMERICAN LEGAL DEVELOPMENT, INTRODUCTION TO SLAVERY AND THE LAW 3 (1997) (explaining how slavery shaped America’s common law).

95. As John Higham has written, Americans “had always proclaimed orderly self-government as the chief glory of the Anglo-Saxons—an inherited capacity so unique that the future of human freedom surely rested in their hands.” HIGHAM, *supra* note 22, at 137; *see also* ROGERS M. SMITH, *supra* note 22, at 86 (declaring that the American revolutionary leaders believed that their “Anglo-Saxon heritage . . . bestow[ed] a special awareness of men’s natural liberties and also unique capacities for self-government.”). Indeed, the colonists cited the conviction that men of British descent were uniquely qualified for republican self-government as a justification for the Revolution because colonial subjugation thwarted their natural inclination as Englishmen toward freedom. *See* THE DECLARATION OF INDEPENDENCE (U.S. 1776).

and protection of that country.”⁹⁶ In *Federalist No. 2*, John Jay emphasized that the Constitution arose out of Americans’ common ethnic and religious heritage.⁹⁷

Soon after ratification, Congress directly connected race with the capacity for embracing the nation’s constitutional values when it enacted the Naturalization Act of 1795, which provided that naturalized citizenship could only be bestowed upon someone who was both a “free white person” and who was “attached to the principles of the constitution of the United States.”⁹⁸ As the Supreme Court later concluded in the *Dred Scott* case, when Congress limited citizenship to white people it merely “followed out the line of division which the Constitution has drawn between the citizen race, who formed and held the Government, and the African race, which they held in subjection and slavery, and governed at their own pleasure.”⁹⁹

The Court’s decision in *Dred Scott* represents the most emphatic endorsement of the view that the Constitution was made to protect white rule.¹⁰⁰ In *Dred Scott*, the Court directly addressed whether persons of

96. THOMAS JEFFERSON, A SUMMARY VIEW OF THE RIGHTS OF BRITISH AMERICA (1774).

97. THE FEDERALIST NO. 2, at 38 (John Jay) (Clinton Rossiter ed., 1961) (“Providence has been pleased to give this one connected country to one united people—a people descended from the same ancestors, speaking the same language, professing the same religion, attached to the same principles of government, very similar in their manners and customs, and who, by their joint counsels, arms, and efforts, fighting side by side throughout a long and bloody war, have nobly established general liberty and independence.”).

98. THIRD CONGRESS, SESS II., at 414, An Act to establish an Uniform Rule of Naturalization; and to repeal the act heretofore passed on that subject, Ch. 20 § 1 (Jan. 29, 1795). The 1795 Act replaced a 1790 naturalization law that similarly limited naturalization to “free white person[s]” who swore an oath to “support the Constitution of the United States.” FIRST CONGRESS, SESS. II., at 108, An act to establish an uniform Rule of Naturalization, Ch. 3 § 1 (March 26, 1790). The dual requirements for naturalized citizenship established by Congress in 1795—commitment to constitutional principles and membership in the white race—persisted, with relatively few changes, until 1952, when Congress finally repealed any racial criteria for citizenship. Immigration and Nationality Act, 66 Stat. 163 (1952).

99. See *Dred Scott v. Sandford*, 60 U.S. 393, 420 (1857).

100. See, e.g., SOUTH CAROLINA, DECLARATION OF THE IMMEDIATE CAUSES WHICH INDUCE AND JUSTIFY THE SECESSION OF SOUTH CAROLINA FROM THE FEDERAL UNION 10 (1860) available at <http://www.atlantahistorycenter.com/>

African descent could be considered part of the American people under the Constitution: “The question is simply this,” the Court asked, “Can a negro, whose ancestors were imported into this country, and sold as slaves, become a member of the political community formed and brought into existence by the Constitution of the United States, and as such become entitled to all the rights, and privileges, and immunities, guarantied by that instrument to the citizen?”¹⁰¹ In answering that question, the Court reviewed the nation’s racial history and concluded that the statement in the Declaration of Independence that “all men are created equal” could only be read to refer to white men.¹⁰² The Court catalogued various race-based laws existing at the time of the nation’s founding and concluded that, for the generation that adopted the Constitution “a perpetual and impassable barrier was intended to be erected between the white race and the one which they had reduced to slavery, and governed as subjects with absolute and despotic power.”¹⁰³ The Court emphatically declared that persons of African descent could make no claims under the Constitution.¹⁰⁴ The Constitution, the Court concluded, was made for white people alone.¹⁰⁵

As Mark Graber has shown, *Dred Scott’s* rejection of black citizenship represented a view shared by American leaders from all regions and across the political spectrum.¹⁰⁶ Although *Dred Scott* provoked

assets/documents/SCarolina-Secession-p1-13.pdf (“This sectional combination for the submersion of the Constitution, has been aided in some of the States by elevating to citizenship, persons who, by the supreme law of the land, are incapable of becoming citizens; and their votes have been used to inaugurate a new policy, hostile to the South, and destructive of its beliefs and safety.”) (hereinafter “SOUTH CAROLINA DECLARATION”); *Thomas R.R. Cobb’s Secessionist Speech* (Nov. 12, 1860), in *SECESSION DEBATED: GEORGIA’S SHOWDOWN IN 1860* at 8 (William W. Freehling and Craig M. Simpson, eds., 1992) (asserting that Lincoln had been elected with the votes of “free negroes . . . although the Supreme Court has declared them not to be citizens of this nation”).

101. *Dred Scott*, 60 U.S. at 403.

102. *Id.*

103. *Id.* at 409.

104. *Id.* at 407 (“[N]either the class of persons who had been imported as slaves, nor their descendants, whether they had become free or not, were then acknowledged as a part of the people . . . they had no rights which the white man was bound to respect.”).

105. *See id.* at 426–27.

106. Mark A. Graber, *Desperately Ducking Slavery: Dred Scott and Contemporary Constitutional Theory*, 14 CONST. COMMENT. 271, 280–85 (1997).

considerable controversy by limiting Congress's power to restrict slavery in federal territories, Democrats and Republicans, Northerners and Southerners overwhelmingly agreed with its conclusions that the United States is a white nation and that the Constitution protects white rule. In his debates with Abraham Lincoln in the 1856 campaign for the Senate, Stephen Douglas, the leader of the Democratic Party, defended *Dred Scott* by saying that "this government was made by our fathers on the white basis. It was made by white men for the benefit of white men and their posterity forever, and was intended to be administered by white men in all time to come."¹⁰⁷ Although Lincoln disagreed with *Dred Scott*'s conclusion that Congress lacked power to restrict slavery in federal territories, he explained he "never ha[d] complained *especially* of the Dred Scott decision because it held that a negro could not be a citizen," and he agreed with Douglas that persons of African descent were incapable of participating in American democracy and should not be made citizens or voters.¹⁰⁸

The belief that the Constitution protects white rule formed a central plank in secessionist thought, from which the Klan later emerged. Secessionists claimed that the South had remained true to the original meaning of the Constitution, while the North had betrayed the nation's founding principles.¹⁰⁹ As Georgia declared in its statement of secession, the

107. Stephen Douglas, *First Joint Debate, at Ottawa, Illinois (Aug. 21, 1858)*, in 3 COMPLETE WORKS OF ABRAHAM LINCOLN 237, 255–56 (John G. Nicolay & John Hay eds., 1894); see also *Speech of Stephen A. Douglas at Jonesboro* (Sept. 15, 1858), in 4 COMPLETE WORKS OF ABRAHAM LINCOLN 1, 22–23 ("I hold that a Negro is not and never ought to be a citizen of the United States. . . . I do not believe that the Almighty made the negro capable of self-government.").

108. Abraham Lincoln, *Seventh and Last Debate with Stephen Douglas at Alton, Illinois*, in 3 THE COLLECTED WORKS OF ABRAHAM LINCOLN, 283, 289–99 (Roy P. Basler, ed., 1953); *Lincoln, Fourth Debate with Stephen A. Douglas at Charleston, Illinois*, in *id.* at 145, 179; *Speech of Abraham Lincoln at Charleston* (Sept. 18, 1858), in THE LINCOLN-DOUGLAS DEBATES OF 1858, 267 (Edwin E. Sparks ed., 1908) ("I will say then that I am not, nor ever have been in favor of bringing about in any way social and political equality of the white and black races—,—that I am not nor ever have been in favor of making voters . . . of Negroes . . ."); *id.* at 303 ("I am not in favor of negro citizenship.").

109. See, e.g., DECLARATION OF THE CAUSES OF SECESSION OF GEORGIA, Jan. 29, 1861, AVALON PROJECT AT YALE LAW SCHOOL available at http://avalon.law.yale.edu/19th_century/csa_geosec.asp ("The people of Georgia have ever been willing to stand by this bargain, this contract [i.e., the Constitution]; they have never sought to evade any of its obligations; they have never hitherto

free states had “utterly broken the compact which our fathers pledged their faith to maintain.”¹¹⁰ Secessionists pointed to a variety of actions by the Northern states and the federal government—such as obstacles imposed to enforce the Fugitive Slave Act and attempts to exclude slavery from federal territories—and asserted that these actions betrayed the nation’s founding document.¹¹¹ Secessionists frequently compared themselves to the nation’s founding fathers, casting the free states, abolitionists, the Republican Party, and the federal government as latter day King Georges.¹¹² In the South’s view, the North’s betrayals of the Constitution amounted to tyranny, justifying secession and violence.

Pointing to constitutional protections for slavery, secessionists asserted that the Constitution fundamentally protected white rule, most centrally the power to rule over Africans held in bondage.¹¹³ Southern states

sought to establish any new government; they have struggled to maintain the ancient right of themselves and the human race through and by that Constitution.”) (hereinafter “GEORGIA DECLARATION”); see Alfred L. Brophy, UNIVERSITY, COURT, AND SLAVE: PRO-SLAVERY THOUGHT IN SOUTHERN COLLEGES & COURTS & THE COMING OF CIVIL WAR ch. 12 (2016).

110. A DECLARATION OF THE IMMEDIATE CAUSES WHICH INDUCE AND JUSTIFY THE SECESSION OF THE STATE OF MISSISSIPPI FROM THE FEDERAL UNION, Jan. 9, 1861, in JOURNAL OF THE STATE CONVENTION 86–88 (1861) (hereinafter “MISSISSIPPI DECLARATION”).

111. *Id.*

112. See generally G. Edward White, *Recovering the Legal History of the Confederacy*, 68 WASH. & LEE L. REV. 467, 483 (2011) (“Supporters of secession frequently compared themselves to the Revolutionary War patriots who had resolved to separate themselves from Great Britain in order to preserve their liberties.”).

113. See, e.g., GEORGIA DECLARATION, *supra* note 111 (asserting that the free states had “persistently refused to comply with their express constitutional obligations”); SOUTH CAROLINA DECLARATION, *supra* note 102 (“The people of the State of South Carolina, in Convention assembled, on the 26th day of April, A.D., 1852, declared that the frequent violations of the Constitution of the United States, by the Federal Government, and its encroachments upon the reserved rights of the States, fully justified this State in then withdrawing from the Federal Union . . . We assert that fourteen of the States have deliberately refused, for years past, to fulfill their constitutional obligations.”); ALABAMA, ORDINANCE OF SECESSION, Jan. 8, 1861, available at <http://digital.archives.alabama.gov/cdm/ref/collection/voices/id/3764> (citing “many and dangerous infractions of the constitution of the United States by many of the States and people of the Northern

charged that free states had betrayed the core meaning of the Constitution by allowing the formation of abolition societies, which, in the words of one state's declaration of secession, advocated "the debasing doctrine of equality of all men, irrespective of race or color—a doctrine at war with nature, in opposition to the experience of mankind, and in violation of the plainest revelations of Divine Law."¹¹⁴ The seceding states charged that free states had further sought to subvert the Constitution by bestowing citizenship and voting rights on African Americans, persons who, in the words of South Carolina's declaration "are incapable of becoming citizens" under the true meaning of the Constitution.¹¹⁵

Secessionist ideology made whiteness central to national identity. In a typical expression of secessionist sentiment, Thomas Cobb, in his speech before the Georgia convention on secession (a speech that was called "probably the most powerful speech made in favor of Georgia's withdrawal from the Union") identified what he considered the central premise of the Constitution: "This Constitution was made for white men—citizens of the United States; this Union was formed by white men, and for the protection and happiness of their race."¹¹⁶ When Texas seceded, it issued a declaration conveying the belief that the states and the national government were "established exclusively by the white race, for themselves and their posterity; that the African race had no agency in their establishment; that they were rightfully held and regarded as an inferior and dependent race, and in that condition only could their existence in this country be rendered beneficial or tolerable."¹¹⁷

section"); MISSOURI, ORDINANCE OF SECESSION, Oct. 31, 1861), *available at* http://www.constitution.org/csa/ordinances_secession.htm#Missouri ("Whereas the present Administration of the Government of the United States has utterly ignored the Constitution, subverted the Government as constructed and intended by its makers, and established a despotic and arbitrary power instead thereof . . .").

114. A DECLARATION OF THE CAUSES WHICH IMPEL THE STATE OF TEXAS TO SECEDE FROM THE FEDERAL UNION, FEB. 2, 1861, *in* *Journal of the Secession Convention of Texas* 61–66 (E.W. Winkler ed., 1912) (hereinafter "TEXAS DECLARATION").

115. SOUTH CAROLINA DECLARATION, *supra* note 102.

116. Cobb's Secessionist Speech, *supra* note 102, at 8; *see* LUCIAN LAMAR KNIGHT, 3 A STANDARD HISTORY OF GEORGIA AND GEORGIANS 1483 (1917).

117. TEXAS DECLARATION, *supra* note 91.

After the war, the Klan, comprised of former Confederates, continued to assert the same constitutional ideology that had been articulated by the secessionist movement. Like secessionists, the Klan argued that white rule lay at the heart of the constitutional order.¹¹⁸ Like secessionists, the Klan argued that the North had betrayed the nation's foundational principles, most centrally the principle of white rule.¹¹⁹ And like secessionists, the Klan argued that the North's violation of the nation's constitutional principles justified violence in defense of the true meaning of the Constitution.¹²⁰

The Klan's belief that white rule was a foundational constitutional value was well within the mainstream of constitutional thought in the postwar South. In 1871, David Schenck, leader of the North Carolina Klan, testified before Congress that the Klan's mission—supporting the original meaning of the Constitution by protecting white rule—was simply a restatement of “the democratic platform of 1868, the platform upon which Seymour and Blair were running.”¹²¹ Schenck apparently intended to convey the message that the Klan should not be seen as a radical organization because its views were identical to the Democratic Party's. In this, Schenck was undoubtedly correct.

As the Democratic Party campaign of 1868 reveals, the constitutional ideology advanced by the Klan remained dominant among white southerners despite the end of the war. Horatio Seymour and Francis Blair, the Democratic Party candidates for President and Vice President, relied heavily on constitutional rhetoric in explicitly appealing to white supremacy. Declaring that Republican rule was imposing “unparalleled oppression and tyranny” upon the South, the platform denounced federal Reconstruction as an effort to disenfranchise whites and establish “negro supremacy,” and declared Reconstruction a “usurpation, and unconstitutional, revolutionary, and void.”¹²² If Republicans prevailed in the election, the platform warned, the Constitution would be lost: “we will meet, as a subjected and conquered

118. See CONSTITUTION OF THE WHITE CAMELIA, *supra* note 47, at 26–27.

119. See *id.*

120. See *id.* at 27.

121. *Testimony of David Schenck (Dec. 8, 1871)*, in 2 JOINT SELECT COMMITTEE REPORT, NORTH CAROLINA, *supra* note 10, at 384.

122. Gerhard Peters & John T. Woolley, *Political Party Platforms*, THE AMERICAN PRESIDENCY PROJECT (July 4, 1868), <http://www.presidency.ucsb.edu/ws/?pid=29579>.

people, amid the ruins of liberty and the scattered fragments of the Constitution.”¹²³

Like the Klan, the Democratic campaign of 1868 connected white supremacy with fidelity to the Constitution. The campaign employed the slogan, “This is a White Man’s Country; Let White Men Rule.”¹²⁴ It issued a coin with the face of presidential candidate Horatio Seymour on one side and on the other a summary of the campaign platform: “The Restoration of Constitutional Liberty: White Men to Govern.”¹²⁵

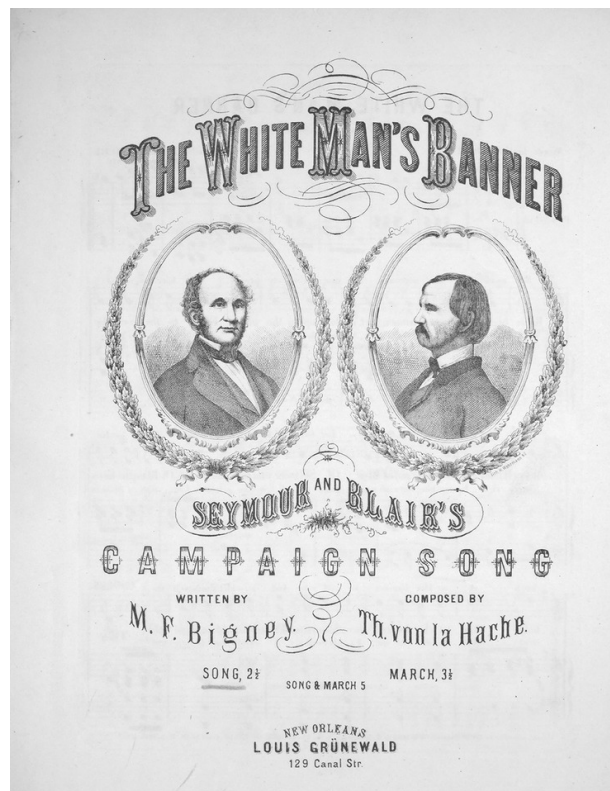


123. *Id.*

124. *Our Ticket, Our Motto: This is a White Man’s Country; Let White Men Rule*, New York Public Library, N. Y. PUB. LIB. DIGITAL COLLECTIONS, <https://digitalcollections.nypl.org/items/62a9d0e6-4fc9-dbce-e040-e00a18064a66>; see also *Horatio Seymour and Francis Blair campaign poster*, WIKIPEDIA (expressing dedication to “constitutional government”).

125. *Seymour & Blair Democratic Candidate Coin*, available at <http://www.coinworld.com/content/dam/cw/news/2016/August/080816/political-medals-record-presidential-also-rans-alexander/seymour-blair-merged.jpg>.

The campaign also adopted a campaign song, “The White Man’s Banner,” which asked voters to stay true to the founding fathers by preserving white rule: “Let, then, all free-born patriots Join, with a brave intent/To vindicate our Father’s choice: ‘A white man’s Government.’”¹²⁶ During the campaign, vice presidential candidate Francis Blair argued that Reconstruction was serving “to strip the white race of their birthright,” the right to rule the United States.¹²⁷ In all these expressions, the Democratic Party articulated an ideology that connected white supremacy with fidelity to the Constitution and the nation’s founding principles, an ideology identical to the Klan’s.



126. *The White Man’s Banner. Seymour and Blair’s Campaign Song*, JOHN HOPKINS SHERIDAN LIBR. & U. MUSEUMS, <http://levysheetmusic.mse.jhu.edu/catalog/levy:collection/007./133>.

127. ANONYMOUS, *THE LIVES OF HORATIO SEYMOUR AND FRANK P. BLAIR, JR.*: CAMPAIGN EDITION 93 (1868).

The results of the 1868 election reveal that the ideology advocated by the Democratic Party and the Klan continued to have widespread appeal among southern white voters. Although Republican Ulysses Grant handily won the Electoral College vote 214 to 80, Seymour received over 47% of the popular vote, including more than 70% of the votes in Kentucky and Louisiana, and over 60% in Georgia and Maryland.¹²⁸ Seymour probably won the majority of the white vote nationally and might well have won the election if former Confederates had not been disfranchised and if the states of Virginia and Texas had been allowed to participate in the election.¹²⁹

D. "Forced by Force to Use Force": The Constitution As Justification for the Klan's Violence

Through violence, the Klan put its mission of restoring white rule into action.¹³⁰ The Klan drew a direct connection between the Constitution and violence: protecting the Constitution was the organization's goal, and violence was its method.

The Klan's official documents make clear that the organization considered violence to be necessary to preserve white rule and thereby defend the Constitution. The North Carolina Klan made clear exactly how its members planned to carry out its constitutional mission: "[e]ach member shall provide himself with a pistol, Ku-Klux gown, and signal instruments."¹³¹ A South Carolina Klan group, which described its mission as "the restoration of constitutional liberty, as taught by our forefathers," similarly declared that it would pursue this goal both by methods that were political and by methods that were "[p]hysical, according to the recognized principles of the law of self-defense."¹³²

128. Peters & Woolley, *supra* note 124.

129. See STEWART MITCHELL, HORATIO SEYMOUR OF NEW YORK 446 (1938).

130. See DAVID M. CHALMERS, HOODED AMERICANISM: THE HISTORY OF THE KU KLUX KLAN 424 (1965) ("The Klan has been a vigilante organization, a national liberation front, a revitalization movement, a secret order, a fraternal lodge, a status society, a bastion of poor-boy politics and, in the twentieth century, a money-maker for its leaders. Its method has been violence.").

131. 2 JOINT SELECT COMMITTEE REPORT, NORTH CAROLINA, *supra* note 10, at 414.

132. 3 JOINT SELECT COMMITTEE REPORT, SOUTH CAROLINA, *supra* note 10, at 23.

Although it is impossible to assess what role defending the Constitution played in Klan members' subjective motivations to use violence, what can be shown is that Klan members frequently pointed to the Constitution to explain and justify their actions. In the civil rights trial of South Carolina Klan members charged with anti-black violence, one Klan member was directed to the Klan's oath to defend "constitutional liberty, as bequeathed to us in its purity by our forefathers," and was asked how this purpose was to be carried out.¹³³ He answered simply: "Well sir, generally, whipping those men who belonged to the [Union] League," the club that recruited African Americans to vote for Republican candidates.¹³⁴ Another witness testified that the Klan's method of protecting the Constitution, as he understood it, was carried out by intimidating voters and preventing African Americans from voting.¹³⁵ In testimony before Congress in 1871, Klan members were asked what the goals of the organization were, and Klan members consistently answered that the Klan's mission was to defend the original meaning of the Constitution and preserve white rule; when asked how the Klan pursued its goals, Klan members pointed to beatings, whippings, and murders.¹³⁶

In some instances, Klan members identified the Constitution as the reason for their actions during the acts of violence themselves. A Republican state legislator in North Carolina testified that when Klansmen kidnapped him and threatened to kill him, they asked "if I did not know that the Constitution, as they had it before the negroes were free, was better."¹³⁷ During the kidnapping, Klan members told him, "we are going to break up that damned, infamous thing, [the amended Constitution] and we are going to kill all men like you who advocate and support any such Government or

133. 5 JOINT SELECT COMMITTEE REPORT, *supra* note 10, at 1700 (testimony of Charles W. Foster).

134. *Id.* at 1701.

135. *Id.* at 1803 (testimony of Osmond Gunthorp).

136. *See, e.g.*, 1 JOINT SELECT COMMITTEE REPORT, *supra* note 10, at 7 (testifying that the Klan carried out its objectives through whipping and murder); *id.* at 39 (testifying that Klan violence was undertaken "for the ultimate good, to save the country"); *id.* at 48 (summarizing grand jury evidence that demonstrated that the Klan carried out its purposes through violence); *id.* at 75 (testifying that the Klan sought to enforce obedience to the law, as conceived by the Klan, through whipping and murder).

137. *Id.* at 23.

Constitution.”¹³⁸ The Klan spared his life only after he promised to support the “Southern cause” and to oppose black suffrage.¹³⁹

Klan ideology declared that violence against African Americans and Republicans were justifiable acts of self-defense.¹⁴⁰ Klan documents make frequent reference to a right of self-defense. The Klan's 1868 Prescript, for instance, required that all new members affirm their belief in “the inalienable right of self-preservation of the people against the exercise of arbitrary and unlicensed power.”¹⁴¹ Klan members frequently claimed that violence to support white rule was tantamount to self-defense. For instance, in 1871, after Klan members killed several black militiamen, they posted a public notice that declared: “Once again have we been forced by force to use Force. . . . We want and will have Justice, but this cannot be till the bleeding fight of freedom is fought.”¹⁴²

Like many others in the South, Klan members believed that federal Reconstruction efforts amounted to an attack on the constitutional rights of white southerners. As one witness testified before Congress in 1871, throughout the South Reconstruction “was denounced as a tyrannical usurpation, the government as a usurped negro government, and every officer as a mean, tyrannical usurper.”¹⁴³ In the face of such allegedly unlawful acts,

138. 2 JOINT SELECT COMMITTEE REPORT, NORTH CAROLINA, *supra* note 10, at 119 (testimony of James M. Justice).

139. *Id.* at 121.

140. *See* TRELEASE, *supra* note 7, at 18 (“To its leaders the Klan was a wholly defensive body of citizens who were regrettably driven underground in their defense of white civilization against Negro depredation and radical tyranny.”).

141. PRESCRIPT OF THE ORDER, *supra* note 1, at 22. Other Klan groups employed similar rhetoric. The Knights of the White Camelia, for example, explained that it would “resort to no forcible means, except for purposes of legitimate and necessary defense.” *Constitution and Ritual of the Knights of the White Camelia*, reprinted in 1 CLASSICS OF AMERICAN POLITICAL AND CONSTITUTIONAL THOUGHT: ORIGINS THROUGH THE CIVIL WAR 1177, 1179 (2007) (Scott J. Hammond, et al., eds.).

142. 4 JOINT SELECT COMMITTEE REPORT, SOUTH CAROLINA, *supra* note 10, at 1003.

143. Walter L. Fleming, *A Scalawag's Opinion of the Causes, Ku Klux Report Alabama Testimony* (1871), in 2 DOCUMENTARY HISTORY OF RECONSTRUCTION: POLITICAL, MILITARY, SOCIAL, RELIGIOUS, EDUCATIONAL & INDUSTRIAL, 1865 TO THE PRESENT TIME 339, 339 (1907). The Klan was far from alone in seeing federal occupation and Reconstruction-era governments as illegal

Klan members asserted not only a right but a duty to defend themselves. As one Klan group asserted:

It . . . becomes our solemn duty, as white men, to resist strenuously and persistently those attempts against our natural and constitutional rights, and to do everything in our power in order to maintain, in this republic, the supremacy of the Caucasian race and restrain the black or African race to that condition of social and political inferiority for which God has destined it.¹⁴⁴

Klan ideology thus taught that violence was imperative to defend the constitutional rights of whites.

The Klan's justification for extra-legal violence fits squarely within the American vigilante tradition.¹⁴⁵ Vigilantes—individuals and groups that assert authority to enforce law and order outside formal legal structures—have been a significant force in the United States since the nation's founding.¹⁴⁶ Vigilante groups are probably most strongly associated with the American frontier, where no one was authorized to enforce the law, but vigilante groups more often have formed when legal authorities were in place

and invalid. *See, e.g.,* Marek D. Steedman, *Resistance, Rebirth, and Redemption: The Rhetoric of White Supremacy in Post-Civil War Louisiana*, 35 *HIS. REFLECTIONS* 97, 102. (describing the resistance of the People's League of Louisiana to Reconstruction). Many Southerners believed that laws supporting racial equality were not merely wrong but were invalid, having been enacted through illegitimate means and enforced through illegitimate governments. The New Orleans Times declared in July 1868 that laws enacted for the purpose of racial equality "will be disregarded and declared null and void as soon as the inalienable rights of the people are again recognized." *TRELEASE, supra note 7*, at xxxvii–xxxviii (quoting New Orleans Times (July 28, 1868)).

144. *Constitution and Ritual of the Knights of the White Camelia*, in *CLASSICS OF AMERICAN POLITICAL AND CONSTITUTIONAL THOUGHT: VOL 1, ORIGINS THROUGH THE CIVIL WAR, supra note 143*, at 1179.

145. *See* RICHARD MAXWELL BROWN, *STRAIN OF VIOLENCE: HISTORICAL STUDIES OF AMERICAN VIOLENCE AND VIGILANTISM* 95–96 (1979).

146. *Id.*

but some residents did not consider them to be valid.¹⁴⁷ Although vigilante movements act outside the law, and often contrary to law, vigilantes frequently draw on American historical events like the Boston Tea Party to claim that they are acting out of patriotism and loyalty to higher law.¹⁴⁸ By taking the law into their own hands when properly constituted legal authorities refuse to act, vigilantes usually assert that they are acting on behalf of the people in the face of tyranny and lawlessness.

In engaging in a campaign of violence and intimidation across the South to prevent the enforcement of the Constitution and the Reconstruction Acts, Klan groups uniformly described themselves as a force for law and order, dedicated to defending the Constitution and federal law.¹⁴⁹ Klan members saw no contradiction between the rhetoric of law and order and the use of extra-legal violence because they believed that the federal government was acting to oppress the white people of the South, in violation of the nation's founding principles.¹⁵⁰ In the Klan's conception, violence to restore white rule was not contrary to law but was necessary to defend it.

E. The Demise of the Klan and the Birth of the Klan Legend

The Klan and similar groups largely ceased their campaigns of terrorism with the end of Reconstruction.¹⁵¹ Vigilante activity to protect white rule had become unnecessary with federal occupation ended and Democrats in office committed to the denial of political rights to African Americans. Although the Klan disappeared, in the following decades the story of the Ku Klux Klan developed into a long-lasting legend that continues

147. See *id.* at 95–133; see also NANCY MACLEAN, *BEHIND THE MASK OF CHIVALRY: THE MAKING OF THE SECOND KU KLUX KLAN* 158–165 (1994) (discussing the ways that the Klan relied on the ideology of vigilantism).

148. BROWN, *supra* note 147, at 5–6, 132. Vigilantes frequently evoke the nation's foundational principles, including the right of popular sovereignty. Cardyn, *supra* note 12, at 794.

149. *Id.* at 800.

150. See WILLIAM PEIRCE RANDEL, *THE KU KLUX KLAN: A CENTURY OF INFAMY* 15 (1969) (explaining that Klansmen saw “no hypocrisy in swearing allegiance to both the Constitution and the Union, and then defying the federal government and certain federal laws” because they believed that federal law was “arbitrary and unauthorized by the Constitution”).

151. DAVID CUNNINGHAM, *KLANSVILLE, U.S.A.: THE RISE AND FALL OF THE CIVIL RIGHTS-ERA KU KLUX KLAN* 21–22 (2012).

to inform perceptions of the Klan. The legend involves heroic white Southerners who banded together to protect American civilization against Radical Republican oppression, government corruption, and rule by buffoonish freedmen. The Constitution features prominently in the legend: the Klan saved it.

The legend began to take shape in 1884, when John C. Lester and Daniel L. Wilson published *Ku Klux Klan: Its Origin, Growth, and Disbandment*, the first account of the Klan written by one of the group's founders.¹⁵² Lester and Wilson declared that the Klan had performed "immense service" to the South by restoring white rule and overthrowing control by African Americans, who had no respect for law and who were "not fitted for the cares of self-control."¹⁵³ Without the Klan, Lester and Wilson declared, "in many sections of the South, life to decent people would not have been tolerable."¹⁵⁴ Lester and Wilson offered particularly strong praise for the Klan's dedication to the Constitution, which they said demonstrated the group's patriotism.¹⁵⁵ As discussed above, the Klan's dedication to the Constitution actually signified its loyalty to the secessionist conception of the Constitution, its opposition to the Reconstruction Amendments, and its justification for a campaign of violence against black citizens. Lester and Wilson, however, pointed to the Klan's oath to defend the Constitution as definitive proof of the Klan's patriotism.¹⁵⁶

Within a generation, a consensus developed among historians that Klan violence had been necessary for Southern redemption.¹⁵⁷ The legend

152. See Walter L. Fleming, *Introduction*, in JOHN C. LESTER AND DANIEL LOVE WILSON, *KU KLUX KLAN: ITS ORIGIN, GROWTH, AND DISBANDMENT* 16–17 (1905 ed.).

153. *Id.* at 78.

154. *Id.* at 80.

155. *Id.* at 155.

156. *Id.* at 87 ("If these men were plotting treason, it puzzles us to know why they should make such a statement.").

157. In 1896, writing in the *American Historical Magazine*, R.L. McDonald described the Klan as a patriotic organization that sought "to protect life and property and to restore order." R.L. McDonald, *The Reconstruction Period in Tennessee*, *AMER. HIST. MAG.* 307, 321 (1896). McDonald asserted that the Klan succeeded in its goals and "proved of vast usefulness, restoring order, preventing crime, and filling the negroes with wholesome awe." *Id.* at 322. For additional examples of the early depictions of the Klan in heroic terms, see JOSEPH G. DE ROULHAC HAMILTON, *RECONSTRUCTION IN NORTH CAROLINA* 452-454 (1914)

that the Klan had redeemed the nation entered popular culture in the novels of Thomas F. Dixon, including *The Clansman: An Historical Romance of the Ku Klux Klan*, published in 1905.¹⁵⁸ “The truth of history,” Dixon declared, “is, that, as originally organized and led, the Ku Klux Klan was the guardian of civilization in the South.”¹⁵⁹ Like the Klan itself, Dixon’s novels depict the Klan’s fight for white supremacy as a fight for the Constitution and American ideals. The protagonist in one novel articulates what Dixon understood to be the Klan’s ideology: “We believe that God has raised up our race, as he ordained Israel of old, in this world-crisis to establish and maintain for weaker races, as a trust for civilisation, the principles of civil and religious Liberty and the forms of Constitutional Government.”¹⁶⁰ In contrast, Dixon portrays the Klan’s opponents as dedicated to the Constitution’s destruction. August Stoneman, a thinly veiled fictionalization of Republican Congressman Thaddeus Stevens, empowers freedmen and disenfranchises whites without any concern that he was betraying the nation’s fundamental principles: “The Constitution be damned!”¹⁶¹

In 1915, D.W. Griffith made *The Clansman* into a movie, which he renamed *The Birth of a Nation*.¹⁶² The film depicts Reconstruction as a time when the South was ruled by incompetent and corrupt black politicians, when black troops humiliated white southerners, and black men threaten to rape white women.¹⁶³ Restoring order, the Klan is described on one of the film’s cue cards as “the organization that saved the South from the anarchy of black

(“Crime and violence of every sort ran unchecked until a large part of the South became a veritable hell through misrule which approximated to anarchy,” and the Ku Klux Klan was “[c]alled into existence by the state of affairs” and succeeded in restoring power “into the hands of the class best fitted to administer.”); *see generally* Otto H. Olsen, *The Ku Klux Klan: A Study in Reconstruction Politics and Propaganda*, 39 N. C. HIST. REV. 340 (1962) (challenging the narrative that the Klan was formed to counter chaos and disorder brought on by Reconstruction).

158. For a discussion of the role of Dixon’s novels in the creating the mythology of the Klan see TRELEASE, *supra* note 7, at 421; CHALMERS, *supra* note 132, at 23–25.

159. THOMAS DIXON, JR., *The Story of the Ku Klux Klan*, in THOMAS DIXON, JR., *THE CLANSMAN: AN AMERICAN DRAMA* 40, 42 (1905).

160. THOMAS DIXON, JR., *THE LEOPARD’S SPOTS* 439 (1902).

161. DIXON, *THE CLANSMAN*, *supra* note 161, at 43.

162. *See* John Hope Franklin, *Birth of a Nation: Propaganda as History*, 20 MASS. REV., no. 3, 1979, at 417, 420.

163. *Id.* at 423, 432.

rule.”¹⁶⁴ *The Birth of a Nation* became one of the most successful and notorious films of all time.¹⁶⁵ After President Woodrow Wilson arranged for a screening of the film at the White House, he reportedly said that it is “like writing history with lighting. My only regret is that it is all so terribly true.”¹⁶⁶ Although it is unclear if Wilson uttered these precise words, the legend had taken hold in the American imagination that through terrorism and violence the Klan had preserved white rule and thereby preserved constitutional government.¹⁶⁷

II. THE SECOND KLAN AND THE CONSTITUTION: 1915-1944

In November 1915, just months after the release of *The Birth of a Nation*, a new organization calling itself the Ku Klux Klan was launched.¹⁶⁸ Like the first Klan, the second Klan appealed to white Americans who believed that their status as the nation’s dominant cultural and political force was threatened. This time the threat to white power came from the increase power and population of Catholic and Jewish immigrants.

Like the first Klan, the second Klan articulated its campaign for maintaining racial dominance as a mission to preserve the Constitution.¹⁶⁹ It declared that only those Americans of the nation’s “original stock” are capable of appreciating the nation’s constitutional values, and all other peoples should be excluded because they pose existential dangers to the nation’s constitutional order.¹⁷⁰ The Klan’s declaration that it would defend the Constitution by preserving white power proved to have strong appeal. Within a decade of its revival, the Klan became one of the nation’s largest organizations, with millions of members spread across the nation.¹⁷¹ With the

164. THE BIRTH OF A NATION (D.W. GRIFFITH 1915), YOUTUBE, at 2:05:23.

165. MELVYN STOKES, D.W. GRIFFITH’S THE BIRTH OF A NATION: A HISTORY OF THE MOST CONTROVERSIAL PICTURE OF ALL TIME 3 (2008).

166. Mark E. Benbow, *Birth of a Quotation: Woodrow Wilson and “Like Writing History with Lightning,”* 9 J. GILDED AGE & PROGRESSIVE ERA, 510, 509–533 (2010).

167. Franklin, “Birth of a Nation,” *supra* note 164, at 426.

168. Michael Rosenwald, *The Ku Klux Klan Was Dead. The First Hollywood Blockbuster Revived It.*, WASH. POST (Aug. 12, 2017).

169. CONSTITUTION AND LAWS OF THE KNIGHTS OF THE KU KLUX KLAN, 11–12 (1921).

170. *Id.* at 10.

171. MCVEIGH, *supra* note 6, at 7.

Klan's support, Congress enacted immigration restrictions that largely closed the door to Jewish and Catholic immigration.¹⁷² The Klan once again claimed that it saved the Constitution by protecting white power.¹⁷³

A. The Rise of the Second Klan

With the legend of the Ku Klux Klan established in American popular culture through Dixon's books and Griffith's film, it was perhaps inevitable that the Klan name would be revived when a new call was made to protect white power. That is just what happened on the evening of Thanksgiving 1915 when William Joseph Simmons and fifteen other men dressed in white robes and hoods climbed to the top of Stone Mountain outside Atlanta, Georgia, and proclaimed the rebirth of the Ku Klux Klan by burning a giant wooden cross that was visible for miles around.¹⁷⁴ Simmons declared himself to be the Klan's new Imperial Wizard and declared that the new Klan sought to carry on the traditions of the original Klan.¹⁷⁵ In fact, the costumes and rituals of the new Klan were largely modeled on Griffith's film. Cross-burning, for instance, had played no part in the original Klan, but Dixon had put it in *THE CLANSMAN* and Griffith used it in *THE BIRTH OF A NATION*, and now, life imitating art, it became a central ritual of the new Klan.¹⁷⁶

It was not merely the success of *BIRTH OF A NATION* that made it an auspicious time to restart the Klan. The new Klan arose at a time of rapid social and demographic changes in the United States. From 1880 to 1920, more than twenty million immigrants came to the United States, and the

172. *Id.* at 117.

173. *Id.*

174. *See* MCVEIGH, *supra* note 6, at 19.

175. CONSTITUTION AND LAWS OF THE KNIGHTS OF THE KU KLUX KLAN 3–4 (1921).

176. Simmons also made the new Klan look like the one in the film, adopting the white robes and hoods used in the film version. THOMAS R. PEGRAM, *ONE HUNDRED PERCENT AMERICAN: THE REBIRTH AND DECLINE OF THE KU KLUX KLAN IN THE 1920S* at 7 (2011). Simmons also used the success of *THE BIRTH OF A NATION* to promote the Klan, placing newspaper ads to join the new Klan—described as “The World’s greatest Secret, Patriotic, Fraternal, Beneficiary Order”—next to ads for the film. MCVEIGH, *supra* note 6, at 20; Franklin, *supra* note 164, at 430; BAKER, *GOSPEL ACCORDING TO THE KLAN*, *supra* note 6, at 5.

percentage of U.S. residents who were foreign-born rose to nearly 15%.¹⁷⁷ Most of the new immigrants were Catholics and Jews from southern and eastern Europe, while most previous immigrants had been Protestants who had come from England, Ireland, and Germany.¹⁷⁸ During this period, the United States was also experiencing rapid urbanization, and by 1920, for the first time, a majority of Americans lived in cities, which were becoming increasingly ethnically diverse as a result of immigration and the migration of African Americans from the South.¹⁷⁹ At the same time, numerous social movements divided the nation, including the labor movement, the suffrage movement, and the temperance movement.¹⁸⁰

Many native-born white Americans viewed these developments with alarm. They believed that the new immigrants brought crime, disease, poverty, ignorance, and dangerously foreign ideas.¹⁸¹ They saw cities as hotbeds of sin, corruption, crime, and drunkenness.¹⁸² They considered the labor movement to be dangerous and radical.¹⁸³ They saw women's suffrage as a danger to traditional morality.¹⁸⁴ All of these changes—the increasing power of new ethnic groups, the shifting center of power to cities, the increasing power of women—threatened the role of white Protestant men as the dominant force in American culture and politics.

177. ROGER DANIELS, *GUARDING THE GOLDEN DOOR: AMERICAN IMMIGRATION POLICY AND IMMIGRANTS SINCE 1882* at 5, Table 1.2 (2004).

178. Helen F. Eckerson, *Immigration and National Origins*, *THE ANNALS OF THE AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCE*, Vol. 367, (Sep., 1966), pp. 4–14, at 6 Table 1; DAVID GOLDFIELD, *ENCYCLOPEDIA OF AMERICAN URBAN HISTORY* 122 (2007).

179. JONATHAN REES, *INDUSTRIALIZATION AND THE TRANSFORMATION OF AMERICAN LIFE: A BRIEF INTRODUCTION* 44 (2013).

180. *Abolition, Women's Rights, and Temperance Movements*, NATIONAL PARK SERVICE, <https://www.nps.gov/wori/learn/historyculture/abolition-womens-rights-and-temperance-movements.htm> (last updated Sept. 20, 2016).

181. HIGHAM, *STRANGERS IN THE LAND*, *supra* note 22, at 159–175; *see also* James S. Pula, *The Progressives, the Immigrant, and the Workplace: Defining Public Perceptions, 1900–1914*, *POLISH AMERICAN STUDIES*, Vol. 52, No. 2 (Autumn, 1995), pp. 57–69.

182. PEGRAM, *ONE HUNDRED PERCENT AMERICAN*, *supra* note 178, at 72.

183. *Id.* at 11; CHALMERS, *HOODED AMERICANISM*, *supra* note 132, at 311.

184. BLEE, *supra* note 6, at 50.

The second Klan emerged to give voice to the fears of white Protestants who felt their status threatened.¹⁸⁵ Hiram Evans, who took over the national operations of the Klan in 1922, declared that the Klan spoke for them:

[It] gives expression, direction, and purpose to the most vital instincts, hopes and resentments of the old stock Americans, provides them with leadership, and is enlisting and preparing them for militant, constructive action toward fulfilling their racial and national destiny.¹⁸⁶

White Protestants needed to organize, Evans explained, because they had become strangers in the land of their fathers.¹⁸⁷ The Klan sought to appeal to those felt disdain for immigrants, Jews, Catholics, and African Americans—

185. Some of the Klan's opponents recognized that the Klan was borne of status anxieties. W.E.B. DuBois called the Klan the "Shape of Fear," a mob that arose to act out of white men's fears "of losing their jobs, of being declassed, degraded or actually disgraced; of losing their hopes, their savings, their plans for their children; of the actual pangs of hunger; of dirt, of crime." W.E. Burghardt Du Bois, *The Shape of Fear*, 223 N. AM. R. 291, 295 (1926). Contemporary historians have similarly concluded that the second Klan appealed to white Protestant who feared losing social and political power. See MCVEIGH, *supra* note 6, at 7 ("[T]he Klan can best be understood as a response to devaluation in the economic, political, and status-based 'purchasing power' of the movement's constituents."); PEGRAM, *supra* note 178, at 11 ("[T]he political and cultural domination exercised by white Protestants was increasingly challenged as Eastern and Southern European immigrants, blacks, Catholics, and Jews carved out pockets of influence and cultural autonomy in public institutions such as political parties and in privately created communities of neighborhoods, clubs, and associations. The Klan was a created community of its own, celebrating white native-born Protestant civilization within a fraternal framework, but it was also an aggressive counterforce to cultural pluralism.").

186. Hiram Wesley Evans, *The Klan's Fight for Americanism*, 233 N. AM. REV. 33, 49 (1926).

187. *Id.* at 39 (positing that the white Protestant "today is a stranger in large parts of the land his fathers gave him. Moreover, he is a most unwelcome stranger, one much spit upon . . .").

groups that Klan members considered below them.¹⁸⁸ At the same time, the Klan expressed resentment felt by many whites for political and social elites, who profited from the immigrant labor and who they believed looked down on regular Americans as “‘hicks’ and ‘rubes’ and ‘drivers of second hand Fords.’”¹⁸⁹ The Klan thus purported to speak for “the plain people,” the “everyday people,” the “salt of the earth,” and demanded “a return of power into the hands of the everyday, not highly cultured, not overly intellectualized, but entirely unspoiled and not de-Americanized, average citizen of the old stock.”¹⁹⁰

Like the original Klan, the second Klan was centrally devoted to white supremacy and considered threats to white supremacy to be tantamount to attacks on the nation itself.¹⁹¹ Framing threats to white power in nationalist terms, the second Klan expressed its mission in patriotic terms, declaring that

188. *Id.* at 34 (“When the Klan first appeared the nation was in the confusion of sudden awakening from the lovely dream of the melting pot, disorganized and helpless before the invasion of aliens and alien ideas.”).

189. *Id.* at 49; America for Americans: Creed of Klanswomen 5 (undated 1920s); Evans, *supra* note 188, at 38 (“Do our overlords of industry realize what they are doing to America? Have they stopped to measure the national consequences of this cheap foreign labor idea? Is it the part of patriotism to import inferior mental and moral elements in such numbers as to lower our standards even below the danger point? Is profit more important than the sum total of American Citizenship?”); H.W. Evans, THE MENACE OF MODERN IMMIGRATION 19 (1924).

190. Evans, *supra* note 188, at 38. The second Klan can be understood as a prototypical example of Middle American Radicals, a term coined in the 1970s by Donald Warren to describe the cohort of white Americans who resent both the elite establishment that governs the country and the poor and working class, who they see as undeserving beneficiaries of government programs. *See* DONALD WARREN, THE RADICAL CENTER: MIDDLE AMERICANS AND THE POLITICS OF ALIENATION (1976); Samuel Francis, Life on MARs (Sept. 1990), *reprinted in* SAMUEL T. FRANCIS, BEAUTIFUL LOSERS (1994); LEONARD ZESKIND, BLOOD AND POLITICS: THE HISTORY OF THE WHITE NATIONALIST MOVEMENT FROM THE MARGINS TO THE MAINSTREAM 282 (2009); Goldstein, Unfit for the Constitution, *supra* note 29.

191. *See* KNIGHTS OF THE KU KLUX KLAN, KLORAN 5 (1916) (declaring the Klan’s dedication “to maintain forever the God-given supremacy of the white race”); *see* PEGRAM, *supra* note 178, at 11 (“The Klan argued that white, Protestant values were the standard for true Americanism and demanded that public institutions, especially schools and government, uphold those standards as normative.”).

it was dedicated to the “sublime principles of a pure Americanism.”¹⁹² Like the original Klan, the new Klan articulated its patriotic mission as a defense of the true meaning of the Constitution. The Klan initiation ritual required new members to swear to protect and defend the Constitution, and the Klan's organizational documents identified the preservation of the Constitution as one of the group's central missions.¹⁹³ Called to testify before Congress to defend the Klan against the charge that it was a subversive organization, William Simmons, the founder of the second Klan, declared that, on the contrary, the Klan was “founded on the bedrock principles of the Constitution of the United States.”¹⁹⁴

Within a decade, the new Klan became one of the largest organizations in the nation.¹⁹⁵ By 1925 it had between three and five million members, roughly the same number of members as the American Federation of Labor.¹⁹⁶ Unlike the original Klan, membership in the second Klan was spread around the country, with strong support in the Midwest and Northwest, in addition to the South.¹⁹⁷ Klan chapters could be found in Los Angeles, New York City, and Washington, D.C., as well as at Harvard, Princeton, and Yale.¹⁹⁸

While the original Klan had sought to operate in secret, the second Klan sought to participate in national and local politics. It threw its support behind candidates for office that it deemed “100 percent American.”¹⁹⁹ In 1922, Texas elected the first United States Senator who was a member of the Klan, and Atlanta elected a Mayor who was a member.²⁰⁰ Klan support was crucial in the selection of the governor of Oregon in 1922, and in the impeachment of the governor of Oklahoma in 1923.²⁰¹ In addition to helping elect “100% Americans,” the Klan campaigned both nationally and locally

192. Ku Klux Creed, in Kloran, *supra* note 193, at 2.

193. *Id.* at 11–12.

194. Letter from William J. Simmons, reprinted in 1921 Congressional Hearings at 128; *see also* Simmons, *supra* note 3, at 46 (“[T]he Klan is a purely American organization assembled around the Constitution of the United States, to safeguard its provisions, advance its purposes, and perpetuate its democracy.”).

195. Maclean, *supra* note 149, at 10.

196. *Id.*

197. *Id.* at 9.

198. McVeigh, *supra* note 6, at 27.

199. *Id.* at 25.

200. *Id.* at 25–26.

201. *Id.* at 26.

for issues that it considered important to white Protestant Americans, most importantly immigration restrictions and opposition to Catholic schools.²⁰²

Klan leaders consistently denied that the organization had any connection to violence and intimidation, but the second Klan, like the first, left behind a substantial record of violence and intimidation. Although the number of acts of Klan violence is impossible to gauge, Klansmen were involved in lynchings, floggings, beatings, and other acts of violence.²⁰³ The Klan held cross burnings and parades of hooded members that sought to intimidate and terrorize their opponents.²⁰⁴ They targeted blacks who they alleged to have harassed, flirted with, or merely looked at, white women.²⁰⁵ They targeted Jews, Catholics, and labor organizers, as well as white Protestants who failed to live up to Klan's notions of Christian morality.²⁰⁶ Few of these crimes were ever punished.²⁰⁷

As quickly as the Klan rose to national prominence, however, its power and membership faded.²⁰⁸ The Klan's demise resulted in part from the success of the anti-immigrant movement. In 1924, Congress enacted the National Origins Act, which severely restricted immigration by Catholics, Jews, and foreigners that the Klan and other nativist organizations deemed to be unassimilable.²⁰⁹ After the election that year, which swept into power a wave of anti-immigrant officials, Imperial Wizard Hiram Evans proclaimed a victory for "100 percent Americans" and declared that the Klan's mission had been accomplished.²¹⁰ The Klan also lost considerable support after it was beset by scandals involving drunken sexual violence by Klan leaders, including the conviction of D.C. Stephenson, the Grand Dragon of Indiana, for abduction and murder.²¹¹ By the end of 1925, Klan membership dropped precipitously.²¹² Much diminished in size, the Klan continued to maintain

202. CHALMERS, *supra* note 132, at 202.

203. MACLEAN, *supra* note 149, at 149–173.

204. MCVEIGH, *supra* note 6, at 149–156.

205. MACLEAN, *supra* note 149, at 164.

206. *Id.* at 165.

207. *Id.* at 168.

208. CHALMERS, *supra* note 132, at 291.

209. The Immigration Act of 1924, Pub L No 68-139, ch. 190, 43 Stat 153.

210. MCVEIGH, *supra* note 6, at 189.

211. *Id.* at 191–92.

212. PEGRAM, *supra* note 178, at 185–216.

chapters in several states until 1944, when the federal government filed a lien for back taxes and, with no funds to pay the bill, the Klan disbanded.²¹³

B. The Second Klan's Constitutional Mission

In the 1923 song “We Are All Loyal Klansmen,” Klan members sang of their devotion to the Constitution and their commitment to defend it:

We are all loyal klansmen,
And klanish as can be
We love our home, this country,
And its flag of liberty,
Its constitution handed down,
Approved by Uncle Sam,
Will always be defended
By the Ku Klux Klan.²¹⁴



213. CHALMERS, *supra* note 132, at 323–24.

214. DANNY O. CREW, *KU KLUX KLAN SHEET MUSIC: AN ILLUSTRATED CATALOGUE OF PUBLISHED MUSIC, 1867–2002* at 53 (2003).

The second Klan expressed an understanding of the Constitution that was in many ways utterly conventional for the time and remains conventional today. The Klan pointed with pride to a number of constitutional provisions that it said expressed foundational American values—such as separation of church and state, freedom of speech, and freedom of political choice.²¹⁵ At a Fourth of July celebration in 1923 that attracted thousands of supporters, Grand Dragon D.C. Stephenson gave a speech entitled “Back to the Constitution,” in which he declared self-government the central constitutional principle as well as the principle that the Klan was fighting to protect.²¹⁶ Hiram Evans, the national Klan leader, identified a longer list of core constitutional principles, which included “[d]emocracy, fairdealing, impartial justice, equal opportunity, religious liberty, independence, self-reliance, courage, endurance, [and] acceptance of individual responsibility.”²¹⁷ Similar lists of principles continue to be identified today as defining the American Creed.²¹⁸

Leaders of the second Klan saw no contradiction between the embrace of white supremacy as a sacred constitutional right and the Constitution’s guaranty of equal protection. To be sure, Klan leaders routinely declared the inequality of the races. William Simmons, the founder of the second Klan, said that African Americans should be considered wards of the citizens who could read and write English and who could demonstrate an understanding of American values.²¹⁹ Given the success of Jim Crow-era

215. See SIMMONS, *supra* note 3, at 16, 47, 96, 142, 199–200.

216. D.C. Stephenson, *Back to the Constitution*, FIERY CROSS 1 (July 6, 1923) (“We always had governed ourselves, and we always meant to.”); *id.* (“The American Revolutionaries was fought for principles of self-government...then embodied in a federal constitution the like of which man never seen, are sacred now as they were then.”).

217. Evans, *supra* note 188, at 53.

218. Writing almost a century after the second Klan, Samuel Huntington identified a core set of American values that is strikingly similar to those identified by Evans: “Americans, it is often said, are a people defined by and united by their commitment to the political principles of liberty, equality, democracy, individualism, human rights, the rule of law, and private property . . .” SAMUEL HUNTINGTON, WHO ARE WE? THE CHALLENGES TO AMERICA’S NATIONAL IDENTITY 46 (2004).

219. SIMMONS, *supra* note 3, at 248–259; see also H.W. EVANS, THE CATHOLIC QUESTION AS VIEWED BY THE KU KLUX KLAN, CURRENT HISTORY 563 (July 1927).

restrictions on suffrage and the entrenchment of segregation, the Klan saw little need to push to repeal or revise the constitutional guarantees of equal protection and equal suffrage. The Klan believed instead that white supremacy could be maintained by encouraging white Americans to recognize their constitutional right and responsibility to rule.²²⁰

Rather than focusing on the Constitution's equality guarantees, the primary substantive agenda of the second Klan focused on the Establishment Clause. William Simmons and other Klan leaders asserted that the Catholic Church sought to interfere with American politics by directing Catholic citizens to engage in bloc voting, which they claimed violated the separation of church and state.²²¹ Klan leaders further charged that Catholic schools undermined American democracy by teaching students to be loyal to the church rather than the nation.²²² Based on the belief that Catholics owed more loyalty to the church than the nation, the Klan argued that Catholics should not be allowed to participate in American democracy.²²³ The Klan asserted that because Catholics assertedly did not respect the constitutional separation of church and state, Catholics should not be allowed to immigrate to the

220. EVANS ET AL., IS THE KU KLUX KLAN CONSTRUCTIVE OR DESTRUCTIVE? A DEBATE BETWEEN IMPERIAL WIZARD EVANS, ISRAEL ZANGWILL AND OTHERS 47–48 (1924) (“[P]rimary responsibility for the preservation and betterment of our form of government rests upon native-born Americans who are white, who are protestants and who are gentiles” and does not require “unlawful attack upon the political, social or economic rights of other American citizens.”) (quoting unnamed “Prominent Indiana Klansman”).

221. SIMMONS, THE KLAN UNMASKED, *supra* note 3, at 66–78.

222. EVANS ET AL., IS THE KU KLUX KLAN CONSTRUCTIVE OR DESTRUCTIVE? A DEBATE BETWEEN IMPERIAL WIZARD EVANS, ISRAEL ZANGWILL AND OTHERS 13, 6–7 (1924) (“We wholly distrust and forever will oppose the parochial school as an institution in American life. It seems to us a dangerous civic and social disintegrant, inspired with the very essence of intolerance and un-Americanism. Catholics cannot be klansmen while to them the presidency at Washington is subordinate to the priesthood at Rome.”) (H.W. Evans).

223. EVANS, THE CATHOLIC QUESTION, *supra* note 221, at 563 (“1. Is the Roman Catholic Church, in doctrines, teachings and practices, in harmony with American principles and institutions? 2. If not, can America safely or wisely endow a man adhering to that Church with political power? We believe that the answer to both questions is an emphatic ‘No.’”).

United States, Catholic citizens should be excluded from the American political process, and Catholic schools should be restricted or closed.²²⁴

The Klan's campaign against Catholic power epitomizes what made the Klan's constitutional ideology distinctive during the second Klan period: the assertion that the nation's constitutional principles were uniquely the product of Anglo-Saxon culture and could only truly be embraced by white Protestants. As one Klan pamphlet put it:

The Declaration of Independence, the Constitution, and the Gettysburg Address are descendants of the Magna Charta—supreme symbols of Anglo-Saxon souls striving for freedom, justice, and humanity. Anglo-Saxons established this Nation, wrote its code, and sent their sons into the wilderness to gather fresh stars for the flag. . . . The making of America is fundamentally an Anglo-Saxon achievement. Anglo-Saxons brains have guided the course of the Republic. Our ideals are Anglo-Saxon, our social traditions, our standards of honor, our quality of imagination, and our indomitability.²²⁵

In the era of eugenics, the Klan employed quasi-scientific claims to support the superiority of white Protestants to embrace constitutional government. According to Klan leader William Simmons, white people—or more specifically, white Anglo-Saxons or “Nordics”—had evolved over thousands of years to embrace the values that they placed in the Constitution and they alone had developed the capacity for constitutional self-government.²²⁶ In the

224. *Id.*

225. Pamphlet, *Americans, Take Heed! Scum O' the Melting Pot*, reprinted in 1921 Congressional Hearings at 126; see also Stephenson, *Back to the Constitution*, *supra* note 218, at 4 (“In seeking to comprehend the genesis of this nation, therefore, we find the inevitable, the fundamental, Anglo-Saxon inheritance of pride and patriotism, the irresistible urge toward self-determination, everywhere and always coming to the surface.”).

226. SIMMONS, *THE KLAN UNMASKED*, *supra* note 3, at 47 (“During all the slow processes of the development of the white man's civilization, there was something inherent in his life that slowly pushed its way up into the consciousness of the individual until it found expression in constitutional government . . .”); see also Evans, *THE MENACE OF MODERN IMMIGRATION*, *supra* note 191, at 21 (“For centuries, on every occasion, upon battlements and platforms and pulpits, in field

Klan's ideology, only "pure Americans" could ever truly embrace "the sublime principles of a pure Americanism."²²⁷ As Simmons declared, "It should go without saying that all men, without reference to origin or history, can not be thrust into this country, and, under restraint and repression, be forced into our ways of thinking and living and so attain the true value of American citizenship."²²⁸ In particular, African Americans could never "attain the Anglo-Saxon level."²²⁹ Catholics too could never be loyal to American institutions, while for Jews, "patriotism, as the Anglo-Saxon feels it, is impossible. . . . Not in a thousand years of continuous residence would he form basic attachments comparable to those the older type of immigrant would form within year."²³⁰

The role of the Constitution in the second Klan's ideology is nicely captured in Branford Clarke's pro-Klan cartoon, "Ringing the Liberty Bell," published in 1926. In the cartoon, an endless sea of hooded and robed Klan members watch as one Klansman rings the Liberty Bell while stepping on the Pope's miter, symbolizing the need to stomp out the evil influence of Catholicism.²³¹ Patriotic symbols abound. One Klansman holds a giant American flag.²³² George Washington watches approvingly from the sky.²³³

and factory, and at his own fireside, the Anglo-Saxon has asked the one paramountly important question—"What is the Law?"").

227. Kloran, *supra* note 193, at 7; Evans, *THE MENACE OF MODERN IMMIGRATION*, *supra* note 191, at 21 ("But generations, nor centuries, cannot school the Latin, the Greek, the Balkan and Slav to that fundamental conception" [i.e., commitment to law]; "We already have at least three powerful and numerous elements that do now, and forever will, defy every fundamental requirement of assimilation. They cannot be merged because of insurmountable social, racial and religious barriers. They will always stand apart from our own people.").

228. SIMMONS, *THE KLAN UNMASKED*, *supra* note 3, at 47; *see also* See H.W. Evans, *Our Mission of Protestant Solidarity*, *Kourier Magazine* 2 (July 1926) ("Democracy has never worked well except among Protestants; the subjection of mind insisted upon by Romanist rule and the irresponsible materialism of the Jewish mind alike fail to make men fit for freedom; the one runs always toward despotism and the other toward communistic Bolshevism.").

229. *Id.* at 22–23.

230. *Id.* at 24.

231. Alma White, illustrated by Rev. Brandford Clarke, *Klansmen: Guardians of Liberty*, PILLAR OF FIRE CHURCH (1926).

232. *Id.*

233. *Id.*

The upper corners of the image contain the dual pillars of Klan ideology—the burning Cross and the Constitution, together embodying the principles of Americanism.²³⁴ In fact, the Klan frequently declared that Christian values and constitutional values were one and the same.²³⁵ As Imperial Wizard Simmons put it, “our patriotic principles and Christianity are inseparable and indivisible” and therefore Klan members “hold steadfastly to the Constitution and the Sermon on the Mount.”²³⁶ As the cartoon illustrates, the Klan understood its fight against Catholics and other supposedly alien peoples as a patriotic fight for American traditions, for Christianity, and for the Constitution.



234. *Id.*

235. See SIMMONS, *THE KLAN UNMASKED*, *supra* note 3 at 54.

236. *Id.*; see also Evans, *Our Mission of Protestant Solidarity*, *supra* note 230 (declaring that the Bible was “the basis of our Constitution, the foundation of our government, the source of our laws, [and] the sheet-anchor of our liberties.”); IDEALS OF THE WOMEN OF THE KLU KLUX KLAN 3 (“We can say to the world without apology, and say truly, that our forefathers founded this as a Protestant country and that it is our purpose to re-establish and maintain it as such.”); see also Evans, *THE MENACE OF MODERN IMMIGRATION*, *supra* note 191, at 4 (“Our cause is true Americanism. This means in all vital things a superior Christian civilization for America.”).

C. *The Widespread Acceptance of the Klan's Constitutional Ideology*

As the last section showed, the second Klan asserted that the Constitution protects certain familiar principles—the rights to free speech, to freely exercise religion, and to participate in self-government, among others—and further asserted that these were *white* principles, or more particularly, Anglo-Saxon principles, which could not be appreciated by other peoples. In order to protect the nation's constitutional order, the Klan argued, the United States must restrict immigration. As Klan leader William Simmons wrote, the Constitution could be saved only if immigration by non-Anglo Saxons were stopped and the nation returned to being “a homogeneous English-speaking nation . . . Such nation will develop according to our Anglo-Saxon methods of free speech, free press, democratic methods and popular respect for the law.”²³⁷

Today, it is anathema to widely shared values to suggest that only white people can embrace American values.²³⁸ As Franklin Roosevelt said in 1943:

The principle on which this country was founded and by which it has always been governed is that Americanism is a matter of the mind and heart; Americanism is not, and never was, a matter of race or ancestry. A good American is one who is loyal to this country and to our creed of liberty and democracy.²³⁹

237. SIMMONS, *supra* note 3, at 240.

238. Today, such views are associated with the far-right. *See, e.g.*, PETER BRIMELOW, *ALIEN NATION: COMMON SENSE ABOUT AMERICA'S IMMIGRATION DISASTER* 10 (1995) (“[T]he American nation has always had a specific ethnic core. And that core has been white.”); JARED TAYLOR, *WHITE IDENTITY: RACIAL CONSCIOUSNESS IN THE 21ST CENTURY* 223 (2011). Taylor has explained that the name “American Renaissance” refers to the goal of making America great again by making it white again. Jared Taylor, *Twelve Years of American Renaissance*, AM. RENAISSANCE 1, 2 (Nov. 2002), <http://www.amren.com/ar/pdfs/2002/200211ar.pdf> (“[The] conviction of the essential “whiteness” of America was central to American thought from colonial times until only 50 or 60 years ago . . .”).

239. *Praises Army Plan for Japanese Unit*, N.Y. TIMES, Feb. 5, 1943, at 6. Presidents have been saying pretty much the same thing ever since. In his first inaugural address, President George W. Bush declared that “America has never been

During the 1920s, however, the Klan articulated the leading view that only those who shared the ethnic background of the nation's original population could embrace American values and participate in self-government.²⁴⁰ That position was widely supported by the science of eugenics, which taught that criminality and laziness were inherited traits, as was the ability to embrace America's constitutional principles.²⁴¹ In 1916, Madison Grant published the enormously influential *THE PASSING OF THE GREAT RACE*, which argued that race was the single explanation for the development of European and American civilization.²⁴² Grant asserted that America's constitutional principles were the products of the Nordic race, who he described as self-

united by blood or birth or soil. We are bound by ideals that move us beyond our backgrounds, lift us above our interests and teach us what it means to be citizens.” George W. Bush, *The First Inaugural Address*, in *SELECTED SPEECHES OF PRESIDENT GEORGE W. BUSH 2001–2008*, at 2, http://georgewbush-whitehouse.archives.gov/infocus/bushrecord/documents/Selected_Speeches_George_W_Bush.pdf; see also Barack Obama, *Inaugural Address by President Barack Obama*, Washington, D.C. (Jan. 21, 2013), <http://www.whitehouse.gov/the-pressoffice/2013/01/21/inaugural-address-president-barack-obama> (“[W]hat binds this nation together is not the colors of our skin or the tenets of our faith or the origins of our names. What makes us exceptional—what makes us American—is our allegiance to an idea”); Ronald Reagan, *Labor Day Speech at Liberty State Park, Jersey City, New Jersey* (Sept. 1, 1980), <https://reaganlibrary.archives.gov/archives/reference/9.1.80.html> (Americans “came from different lands but they shared the same values, the same dream.”); William Jefferson Clinton, *Remarks by the President in Address to the Liz Sutherland Carpenter Distinguished Lectureship in the Humanities and Sciences* (Oct. 16, 1995) (“We must be one—as neighbors, as fellow citizens; not separate camps, but family—white, black, Latino, all of us, no matter how different, who share basic American values and are willing to live by them.”).

240. See Goldstein, *Unfit for the Constitution*, *supra* note 29.

241. DAVID SUZUKI, *LETTERS TO MY GRANDCHILDREN*, 19 (2015).

242. MADISON GRANT, *THE PASSING OF THE GREAT RACE*, 227 (2d ed. 1918) (“The progress of civilization becomes evident only when immense periods are studied and compared, but the lesson is always the same, namely, that race is everything.”). It has been referred to as the “bible of scientific racism,” and Adolf Hitler is said to have called the German edition “my bible.” JONATHAN PETER SPIRO, *DEFENDING THE MASTER RACE: CONSERVATION, EUGENICS, AND THE LEGACY OF MADISON GRANT* xi, 140 (2009); see also HIGHAM, *supra* note 22, at 271 (“Intellectually the resurgent racism of the early twenties drew its central inspiration from Madison Grant’s *THE PASSING OF THE GREAT RACE*.”).

reliant, fiercely individualistic, and “jealous of their personal freedom both in political and religious systems.”²⁴³ As one of Grant’s disciples wrote: “Americanism is actually the racial thought of the Nordic race, evolved after a thousand years of experience, which includes such epoch-making documents as the Magna Charta and the Declaration of Independence.”²⁴⁴ Grant argued that immigrants from southern and eastern Europe should be excluded precisely because they lacked the fundamental American capacity for self-government.²⁴⁵

The Immigration Restriction League, the leading advocate for immigration restriction, agreed with Grant that Catholics and Jews should be excluded from entry because they could never embrace American values: “[T]he laws of heredity are at work,” declared Robert DeCourcy Ward, one of the founders of the League.²⁴⁶ “We cannot make a well-bred dog out of a mongrel by teaching him tricks. Nor can we make a race true to the American type by any process of Americanization”²⁴⁷

To be sure, leading Jews, Catholics, and African Americans spoke out against the Klan and argued that they too embraced American values. Rabbi Joseph Silverman, for instance, responded to an essay by Klan leader Hiram Evans and disputed the claim that “We the People” referred solely to white, native-born Protestants: “Catholic, Jewish, Negro and atheistic or non-religious citizens are also true Americans—as genuine Americans as the Klansmen claim to be.”²⁴⁸ Silverman charged that the Klan was engaged in

243. GRANT, *THE PASSING OF THE GREAT RACE*, *supra* note 244, at 228.

244. CLINTON STODDARD BURR, *AMERICA'S RACE HERITAGE*, 208 (1922).

245. *Id.* at 12 (“Instead of retaining political control and making citizenship an honorable and valued privilege, [the American] entrusted the government of his country and the maintenance of his ideals to races who have never yet succeeded in governing themselves, much less any one else.”)

246. Selective Immigration Legislation: Hearing on S. S.2365 and S.2576 Before the Comm. On Immigration, 68th Congress. 198 (1924) (Statement of Robert Ward, Professor, Harvard University).

247. Robert Ward, *Fallacies of the Melting-Pot Idea and America's Traditional Immigration Policy*, in *THE ALIEN IN OUR MIDST* 230–231 (Madison Grant and Chas. Stewart Davison, eds., 1930).

248. Silverman, *The Ku Klux Klan: A Paradox*, in 223 *THE NORTH AMERICAN REVIEW*, at 282, 287 (Jun. – Aug. 1926); *see also* Lynn Dumenil, *The Tribal Twenties: “Assimilated” Catholics’ Response to Anti-Catholicism in the 1920s*, in *JOURNAL OF AMERICAN ETHNIC HISTORY* 21, 28 (Fall 1991) (declaring that Catholics had participated “in the forming of a Constitution which guarantees

nothing less than “guerrilla warfare against the Constitution.”²⁴⁹ James Weldon Johnson, the Executive Director of the National Association for the Advancement of Colored People, argued that American culture, including its political culture, was “the product of fertilization of different races and bloods, different kinds of civilization, brought together through commerce, race mixture, the arts.”²⁵⁰ And Bishop Joseph Schrembs articulated what in a later generation would become a national consensus: “We are the blend of all the peoples of the world, and I think we are much the better for that. Americanism is not a matter of birth, Americanism is a matter of faith, of consecration to the ideals of America.”²⁵¹

Congress showed that it agreed with the Klan. In 1924, in enacting the National Origins Act, members of Congress made no secret that the Act was intended to maintain white rule—specifically, control by what the law’s supporters referred to as the “Nordic” and Anglo-Saxon sub-categories of the white race.²⁵² Members of Congress openly claimed that Asian, Jewish, Italian, and other immigrants must be excluded from immigration precisely because they could never embrace the nation’s constitutional values.²⁵³ As the House Committee Report on the National Origins Act declared, “If,

to all liberty, equality, justice, freedom of religion and pursuit of happiness.”) (quoting Father D. L. Monahan, *Indiana Catholic and Record*, 17 October 1924, p.1).

249. Silverman, *supra* note 250, at 283–84. Father Martin Scott also disputed the Klan’s claim that only white Protestants could embrace constitutional values, asserting that unlike the Klan “Catholics stand by and for the Constitution and its Amendments.” Martin J. Scott, *Catholics and the Ku Klux Klan*, in *THE NORTH AMERICAN REVIEW* 268, 283 (1926). In Scott’s view, it was the Klan, not immigrants, that had undermined the Constitution because Klan members had “done their best to make null and void the Constitutional Amendments granting the electoral franchise to our colored citizens.” *Id.* at 274.

250. James Weldon Johnson, *Is the Negro a Danger to White Culture?*, in *IN SEARCH OF DEMOCRACY: THE NAACP WRITINGS OF JAMES WELDON JOHNSON, WALTER WHITE, AND ROY WILKINS (1920–1927)* 105–06 (Sondra Kathryn Wilson, ed.) (1999).

251. Dumenil, *The Tribal Twenties*, *supra* note 250, at 31–32.

252. See, e.g., Cong. Rec. 11744 (June 24, 1924) (“Mr. Speaker, with this new immigration act the United States is undertaking to regulate and control the great problem of the commingling of races. Our hope is in a homogeneous Nation.”) (Rep. Johnson).

253. Restriction of Immigration, House of Reps. 68th Cong., 1st sess., Report no. 350 (March 24, 1924) at 13.

therefore, the principle of individual liberty, guarded by a constitutional government created on this continent nearly a century and a half ago, is to endure, the basic strain of our population must be maintained . . .”²⁵⁴ To protect the Constitution, Congress declared, the nation must stay white.

The President too agreed with the Klan that the Constitution was written for a white Protestant nation. In his 1923 State of the Union message, Calvin Coolidge declared that the nation had been “created by people who had a background of self-government” and that immigration should be restricted to those racial groups with the same background.²⁵⁵ Preservation of the nation’s constitutional values required that the nation must stay white. Or as Coolidge more succinctly put it: “America must be kept American.”²⁵⁶

Although it is not entirely clear how much difference Klan support made in the passage of the National Origins Act, the Klan immediately took credit. As a Klan newspaper declared: “If the flow of foreigners in this country had not been checked, it would have been but a short time until they would have made of America a country far different from the ideals on which it was founded. The Klan has taken the lead in teaching and expounding the ideals of true Americanism, and to it is due most of the credit for warning and protecting the country from the alien hordes that have threatened to overrun it.”²⁵⁷ By fighting to keep out unwanted foreigners, the Klan declared, it had saved the nation’s founding ideals.

D. The Constitution as Justification for the Klan's Violence

Throughout its history, the Klan has embraced violence and terrorism as legitimate methods of putting its ideology into action. In the second Klan period, however, it is challenging to examine the Klan’s justifications for violence because the Klan’s official publications of the period uniformly denounced violence.²⁵⁸ Unlike other Klan periods, Klan members of the

254. *Id.*

255. Calvin Coolidge, *First Annual Message*, (Dec. 6, 1923), <http://www.presidency.ucsb.edu/ws/?pid=29564>.

256. *Id.*

257. Imperial Night-Hawk, KU KLUX KLAN, (Sept. 17, 1924).

258. SIMMONS, *supra* note 3, at 16 (“Our general organization would not tolerate for a moment any illegal act on the part of any of our local organizations.”); *id.* at 23 (“There is no intention on the part of the present Klan to intimidate or overawe by spectral, ghostly garb, or to accomplish its aim by demonstrations of

1920s offered few full-throated justifications for violence. In fact, Imperial Wizard Simmons declared that he “vigorously denied that a single crime had ever been committed by the authority of the Knights of the Ku Klux Klan.”²⁵⁹

It is nonetheless apparent that during the second Klan era the Constitution continued to play a central role in the Klan’s justification for violence. Klan literature of the period strongly suggests that, because white rule is necessary to preserve American values, violence is justified to protect it. For instance, one Klan publication declared that because white supremacy is a “sacred constitutional prerogative” any effort to undermine it “must be resisted”:

Every effort to wrest from the White Race the management of its affairs in order to transfer it to the control of blacks or any other color, or to permit them to share in its control, is an invasion of our sacred constitutional prerogatives and a violation of divinely established laws. Every effort to wrest from the White People the control of this country must be resisted.²⁶⁰

Although the statement does not expressly refer to violence and terrorism, it is apparent that the Klan believed that militant action was needed to protect the “sacred constitutional” right to white supremacy.²⁶¹

force or acts of violence, or by a supergovernment under disguise, or by moving in the darkness of the night.”).

259. *Id.* at 93.

260. *Id.* at 4.

261. Another statement in this document makes the same point perhaps more clearly, declaring that African Americans who get out of line may need to be “reminded” of their proper place in the nation’s hierarchy:

We would not rob the colored population of their rights, but we demand that they respect the rights of the White Race in whose country they are permitted to reside. When it comes to the point that they cannot and will not recognize those rights they must be reminded that this is a White Peoples’ country, so that they will seek for themselves a country more agreeable to their tastes and aspirations.

Ideals of the Women of the Ku Klux Klan, *supra* note 238, at 4–5. Although the Klan women did not specify what precisely should be done to “remind” black people of their place in the Klan’s America, it is apparent that they had violence in mind,

While never publicly calling on white Americans to use violence, Imperial Wizard Simmons asked white Americans to heed the “imperative call of higher justice” and to act to “keep Anglo-Saxon American civilization, institutions, politics and society pure.”²⁶² As this statement suggests, the Klan’s claim that white supremacy is of constitutional status—that it had a claim of “higher justice” than ordinary law—powerfully served to justify violence. Articulating white supremacy in constitutional terms, the Klan presented its mission as a patriotic defense of the nation, a cause for which killing and dying are frequently recognized to be justified.²⁶³

During the second Klan period, the Klan acknowledged only one instance in which it was involved in violence—the notorious massacre of African Americans in Ocoee, Florida, on election day, November 2, 1920—and its justification sheds light on how the movement understood vigilante violence to be a heroic force for law and order.²⁶⁴ As detailed by contemporary historian Paul Ortiz, the violence in Ocoee arose in response to a state-wide drive to register African American voters, which was conducted in the spring and summer of 1920 by a local black organization and supported by the NAACP and the Republican Party.²⁶⁵ Throughout

violence sufficient to encourage black people to leave the country if they insisted on demanding equal rights.

262. 1921 Congressional Hearings at 125.

263. As Michael Ignatieff has written, “As a moral ideal, nationalism is an ethic of heroic sacrifice, justifying the use of violence in the defense of one’s nation against enemies, internal or external.” MICHAEL IGNATIEFF, *BLOOD AND BELONGING: JOURNEYS INTO THE NEW NATIONALISM* 5 (1993); *see also* Ernest Renan, *What Is a Nation?*, in *BECOMING NATIONAL: A READER* 42, 53 (Geoff Eley & Ronald Grigor Suny eds., 1996) (“A nation is therefore a large-scale solidarity, constituted by the feeling of the sacrifices that one has made in the past and of those that one is prepared to make in the future.”); BENEDICT ANDERSON, *IMAGINED COMMUNITIES: REFLECTIONS IN THE ORIGIN AND SPREAD OF NATIONALISM* 7 (2006) (stating that the imagined sense of fraternity created by nationalism “makes it possible, over the past two centuries, for so many millions of people, not so much to kill, as willingly to die for such limited imaginings.”); ANTHONY D. SMITH, *CHOSEN PEOPLES* 218–53 (2003); ANTHONY D. SMITH, *NATIONALISM AND MODERNISM* 97 (1998) (describing nationalism as “a fervent and puritan ideology of mass sacrifice”).

264. SIMMONS, *supra* note 3, at 41–42.

265. PAUL ORTIZ, *EMANCIPATION BETRAYED: THE HIDDEN HISTORY OF BLACK ORGANIZING AND WHITE VIOLENCE IN FLORIDA FROM RECONSTRUCTION TO THE BLOODY ELECTION OF 1920*, 171–204 (2005).

Florida, Klan chapters organized to oppose the registration drive. In Miami, the Klan posted signs to warn African Americans that voting could cost their lives: “Beware! The Ku Klux Klan is again alive! And every Negro who approaches a polling place next Tuesday will be a marked man. This is a white man’s country, boys, save your own life next Tuesday.”²⁶⁶ The Klan instructed leading Republican Party officials to halt efforts to register black voters: “We shall always enjoy WHITE SUPREMACY in this country and he who interferes must face the consequences.”²⁶⁷ Three weeks before election day, the Klan issued a specific warning to the black residents of Ocoee, Florida, that “not a single Negro would be permitted to vote.”²⁶⁸ A few days before the election, Klan members marched in full regalia in nearby Orlando.²⁶⁹

On Election Day, bands of Klansmen drove between polling places and attacked African Americans waiting in line to vote.²⁷⁰ Mose Norman was among those waiting to vote in Ocoee, but he had been turned away even though he was registered to vote.²⁷¹ Norman fled the white mob and took refuge at the house of July Perry, an African American farmer.²⁷² The mob arrived at Perry’s house and broke the door down, and Perry shot and killed one of the white attackers.²⁷³ The news of the shooting quickly reached Orlando, and carloads of armed white men rushed to Perry’s house.²⁷⁴ The mob captured Perry and lynched him, then left his body hanging from a telephone pole.²⁷⁵ Unable to find Norman, the mob descended on the nearby black neighborhood, indiscriminately shooting African Americans and burning down their houses.²⁷⁶ The number of people killed in the massacre is unknown—white officials claimed that there were as few as 10, but an investigation by the NAACP estimated that between 30 and 60 African

266. *Id.* at 205 (quoting the Ku Klux Warnings to Afro-Americans Nov. 26, 1920).

267. *Id.* at 214–15.

268. *Id.* at 214 (internal citations omitted).

269. *Id.* at 215.

270. *Id.* at 217–29.

271. *Id.* at 220–21.

272. *Id.*

273. *Id.* at 221.

274. *Id.*

275. *Id.*

276. *Id.* at 221–22.

Americans were killed, as well as two Klan members.²⁷⁷ In the days following the riot, whites threatened the remaining black population of Ocoee to sell their property and leave or they too would be shot and burned.²⁷⁸ In the aftermath, the entire black population fled, and no African Americans lived in Ocoee for fifty years.²⁷⁹

The Klan offered a very different version of these events. Imperial Wizard Simmons conceded that Klan members had been involved in violence in Ocoee, but he claimed that Klan members had been the heroic defenders of law and order.²⁸⁰ Simmons claimed that the riot arose after “one or more Negroes, disqualified by law from voting, were nevertheless demanding that they be permitted to vote.”²⁸¹ Unhappy at the denial of an unlawful request to vote, blacks began to riot and instigated a fight with a group of whites unaffiliated with the Klan, who proceeded to march on the black neighborhood.²⁸² Only then, Simmons claims, did Klan members become involved, and they acted solely to protect law and order, placing “their services at the disposal of the officers of the law.”²⁸³ Simmons describes the Klansmen as acting with great heroism, succeeding in driving back the white mob, although two Klansmen “lost their lives in defense of the law and while protecting the Negroes of their town.”²⁸⁴

In the Klan's version of the events in Ocoee, violence erupted when African Americans transgressed the natural and legal order by demanding to vote in violation of the law, and the Klan served to enforce the law, quelling violence, while protecting the constitutionally-mandated racial hierarchy. As this story suggests, the Klan understood its violence—terrorism and murder to preserve white supremacy—to be defensive in nature, done in heroic service to the cause of law and order.

277. See James Weldon Johnson, *IN SEARCH OF DEMOCRACY: THE NAACP WRITINGS OF JAMES WELDON JOHNSON, WALTER WHITE, AND ROY WILKINS (1920–1977)* 18 (Sondra Kathryn Wilson ed., 1999).

278. ORTIZ, *supra* note 267, at 223.

279. *Id.*

280. SIMMONS, *supra* note 3, at 41.

281. *Id.*

282. *Id.*

283. *Id.* at 42

284. *Id.*

E. The Demise of the Second Klan

As quickly as the Klan came to prominence, the movement collapsed. By the end of the 1920s, the Klan movement was all but dead.²⁸⁵ Historians have attributed the collapse of the Klan to poor organization, to a series of scandals that beset the group's leadership, and to the absence of a positive agenda to sustain the movement.²⁸⁶ The Klan itself, however, offered a different explanation: it had succeeded in protecting Americanism and maintaining the dominance of native-born Americans. Writing in January 1925, Imperial Wizard Hiram Evans declared that the Klan had played a pivotal role in the passage of the National Origins Act, had helped elect pure Americans from coast to coast, and had turned back the tide of alien influences.²⁸⁷ With the election of officials who supported white Protestant rule and the adoption of a national immigration policy designed to keep out dangerous aliens, the Klan declared, whites no longer had anything to fear.

Later eras of the Klan have looked back on the 1920s as the Klan's second great triumph. Like the original Klan, the second Klan succeeded at protecting white rule and thereby saved the nation. In the 1960s, the Klan put out flyers for new members that declared that "the KKK has twice saved this nation from destruction, as history clearly records."²⁸⁸ In the first era, the Klan saved the nation from the threat posed by the emancipation, and in the second era, the Klan protected the nation from the threat posed by immigrants. Like its predecessors, later eras of the Klan declared that they too would remain forever vigilant to protect America and its Constitution against any new threats to white power.

285. See MCVEIGH, *supra* note 6, at 181.

286. See *id.* at 289 (summarizing explanations for the Klan's collapse).

287. Evans, *New Era Dawns for America*, 4 FIERY CROSS, 2 (Jan. 9, 1925).

288. *Here are Twenty Reasons WHY you should, if qualified, join, aid and support the White Knights of the Ku Klux Klan of Mississippi*, 3 HUAC 2747 (1966); *Fifty reasons why you should be a member of the United Klans of America, Inc.* (the Klan "saved the South twice, and will save it again and again."); see also *The Ku Klux Klan and Its Story*, FIERY CROSS, Vol. 2, 9th ed., p. 18 (1967) (asserting the second Klan arose when Catholics, socialists, and Communists "threatened the freedom of the individual citizen in the United States" but dissipated when "the danger from the Roman Catholic Church had abated").

III. THE THIRD KLAN AND THE CONSTITUTION: 1944-1971

In the 1950s, a new threat to white power arose from the civil rights movement, and the Klan rose once again to face it. It declared the civil rights movement an alien force that sought to destroy the nation by destroying the Constitution. While other organizations vowed to defend segregation through lawful means, only the Klan proclaimed the duty of white Americans to kill and die in the name of the Constitution.²⁸⁹ That message succeeded in drawing tens of thousands Americans to join the Klan, and many of them heeded the call for violence.

A. *The Rise of the Third Klan*

After the national Ku Klux Klan organization disbanded in 1944, the Klan became a decentralized organization, with hundreds of local groups calling themselves the Klan.²⁹⁰ Much diminished in size from the 1920s, the Klan shifted its focus from fighting Catholics and immigration to fighting communism.²⁹¹ The Klan experienced a resurgence in the 1950s and 1960s, however, when white southerners faced a new threat to their status and power. This time the threat came from the civil rights movement, which sought to end race discrimination in education, employment, housing, and voting.

The Klan geared up to defend segregation long before other southerners recognized the threat. In 1951, three years before the Supreme Court's decision in *Brown v. Board of Education*, Grand Dragon Thomas Hamilton of the Carolina Klansmen promised a Klan rally, "No, nigras will never enter a white school as long as the Klan exists. And I don't care what

289. *New Era Dawns for America*, FIERY CROSS (United Klans of America, Tuscaloosa, AL), Jan. 1925.

290. For instance, in December 1949, a group calling itself the Original Southern Klans was formed and proclaimed that it was "launching a crusade for the return of this country back to the principles and ideals and faiths of our forefathers." *National Klan Group Formed*, MONTGOMERY ADVERTISER (Dec. 18, 1949).

291. The number of Klan members during the 1940s is subject to widely varying estimates, from as few as 10,000 members to as many as 500,000. CHALMERS, *supra* note 132, at 333; Stetson Kennedy, *Status of the KKK in the U.S.A.*, 19 Oct. 1949 (quoted in Evelyn Rich, Ph.D. Dissertation, *Ku Klux Klan Ideology, 1954–1988*, at 16 (1988)).

the Supreme Court does about it, blood will flow in the streets of that state before that happens.”²⁹²

After *Brown*, white southerners rallied to defend segregation, and the Klan was one voice in what was essentially a unified white coalition. This coalition included nearly the entirety of the Southern congressional delegation, which issued a resolution, known as the Southern Manifesto, that condemned the *Brown* decision as a violation of the nation’s constitutional heritage and called on state and local governments “to resist forced integration by any lawful means.”²⁹³ Taking up the suggestion, Southern governors, legislators, mayors, and members of city councils and school boards, adopted numerous obstacles to school desegregation.²⁹⁴

Less than two months after *Brown*, the first White Citizens Council was founded in Mississippi and became the leading voice of the white establishment in defending segregation.²⁹⁵ Within four years, the Councils were formed across the South and claimed to have 500,000 members.²⁹⁶ White Citizens Councils positioned themselves as the leading segregationist voice among the white political and business establishment.²⁹⁷ The Councils—which met openly, unlike the Klan—deliberately sought to distance themselves from the Klan.²⁹⁸ The Councils explained that they were comprised of “high-principled community leaders” who were “among America’s finest citizens,” while the Klan sought to harness “the wrath of ruffian whites who may resort to violence.”²⁹⁹

292. John Powell, *The Klan Un-Klandestine*, THE NATION 255 (Sept. 29, 1951).

293. 102 Cong. Rec. 4460 (1956) (“Southern Manifesto”).

294. See GEORGE LEWIS, *MASSIVE RESISTANCE: THE WHITE RESPONSE TO THE CIVIL RIGHTS MOVEMENT* (2006).

295. NEIL R. MCMILLEN, *THE CITIZENS’ COUNCIL: ORGANIZED RESISTANCE TO THE SECOND RECONSTRUCTION, 1954–64* 16 (1971).

296. *Id.* at 153. It is possible, however, that the actual membership in the Councils was only half that number. *Id.*

297. *Id.* at 11.

298. Thomas R. Waring, *Mississippi Citizens’ Councils Are Protecting Both Races*, 1 THE CITIZENS COUNCIL, 1 (Oct. 1955) (declaring that the Mississippi Councils are “representative of the best people of the state”); Rich, *supra* note 293, at 27–28.

299. Robert Webb, *Citizen Council No Place for Klan*, THE CITIZEN COUNCIL p.1 (March 1956); Thomas R. Waring, *Mississippi Citizens’ Councils Are Protecting Both Races*, THE CITIZENS COUNCIL, Vol. 1, No. 1, p.1 (Oct. 1955).

Klan membership too swelled after *Brown*, although precise numbers remain uncertain.³⁰⁰ Although membership had dwindled to perhaps a few thousand after 1944, by 1964 Klan chapters had between 40,000 and 50,000 members.³⁰¹ The Klan sought to position itself as the most militant group fighting to preserve white rule. While other groups were merely talking, the Klan declared, it was actively fighting: “We will fight with every means at our disposal—the ballot box, in the swamps, or in the hills if necessary, for we shall never surrender.”³⁰² Among the groups defending segregation, the Klan was the only one that openly advocated violence. “If it takes buckshot to keep the black race down,” declared Wild Bill Davidson, head of the U.S. Klans, “Klansmen will use it.”³⁰³

The Klan was true to its word. It engaged in a wave of violence intended to terrorize anyone perceived as supporting civil rights. From 1954 to 1958, in the first four years after the decision in *Brown v. Board of Education*, the Klan was involved in at least 530 cases of overt racial violence, including at least six murders, 29 shootings, 44 beatings, 5 stabbings, 30 home bombings, 8 home burnings, 4 school bombings, 7 church bombings, and 4 synagogue bombings.³⁰⁴ During the 1960s, the Klan increased its campaign of terror as the civil rights movement succeeded. The Klan perpetrated many of the most notorious acts of violence of the civil rights era. In 1961, the Klan fomented riots against the Freedom Riders in Alabama.³⁰⁵ In 1963, the Klan bombed the Sixteenth Street Baptist Church in Birmingham, Alabama, killing four African American girls.³⁰⁶ In June 1964, Mississippi Klan members kidnapped and murdered civil rights workers James Chaney, Andrew Goodman, and Michael Schwerner.³⁰⁷ In

300. CHALMERS, *supra* note 104, at 343.

301. MICHAEL NEWTON, *THE FBI AND THE KKK: A CRITICAL HISTORY* 101 (2009).

302. Flyer, United Klans of America (1965).

303. ARNOLD FORSTER AND BENJAMIN R. EPSTEIN, *REPORT ON THE KU KLUX KLAN* 21 (1965).

304. CHALMERS, *supra* note 104, at 349–350.

305. *Id.* at 370–71.

306. *Id.* at 7.

307. DAVID CUNNINGHAM, *KLANSVILLE, U.S.A.: THE RISE AND FALL OF THE CIVIL RIGHTS-ERA KU KLUX KLAN* 55–56 (2012); SETH CAGIN & PHILIP DRAY, *WE ARE NOT AFRAID: THE STORY OF GOODMAN, SCHWERNER, AND CHANEY AND THE CIVIL RIGHTS CAMPAIGN FOR MISSISSIPPI* (1988).

March 1965, Klan members shot and killed Viola Liuzzo, a civil rights worker who helping with the March on Selma, Alabama.³⁰⁸

B. The Central Role of the Constitution in the Klan's Defense of Segregation

From Southern members of Congress to the White Citizens Councils to the Klan, white southerners framed the fight to preserve segregation in nationalist terms. They uniformly described the civil rights movement as a threat to the American way of life.³⁰⁹ All the groups defending segregation rallied around the Constitution as the central symbol of the nation's principles that they claimed were under attack. Although the Klan shared much of the same ideology as other groups supporting segregation, it presented a more radical constitutional ideology that justified violence in defense of segregation.

The Southern Manifesto typified the mainstream defense of segregation. It condemned *Brown* as a "clear abuse of power" because, in the view of the 19 Senators and 77 Congressmen who signed it, the Constitution does not address education and therefore left the issue of segregated schools to be decided by the states.³¹⁰ White Citizens Councils similarly pointed to specific constitutional principles that had long been used to defend white rule, including states' rights associated with the Tenth Amendment.³¹¹ Taking a more radical tack, some segregationists argued that the Fourteenth Amendment had never been validly ratified and therefore was void.³¹² In 1957, the State of Georgia adopted a resolution urging Congress to declare both the Fourteenth and Fifteenth Amendments void.³¹³

In addition to disputing many of the specific legal points made in the *Brown* decision, mainstream segregationists frequently invoked the Constitution as the embodiment of the nation's values that they believed would be undermined by integration. Mississippi Senator James Eastland,

308. CUNNINGHAM, *supra* note 309, at 69.

309. See e.g., LEWIS, *supra* note 296, at 44–60.

310. *Id.* at 44–59.

311. MCMILLEN, *supra* note 297, at 74, 109, 189–190.

312. See Walter J. Suthon, *The Dubious Origin of the 14th Amendment*, U.S. NEWS & WORLD REP., July 20, 1956; David Lawrence, *There Is No 14th Amendment*, U.S. NEWS & WORLD REP., Sept. 27, 1957 at 140.

313. S.J. Res. 39, Gen. Assemb. (Ga. 1957).

one of the signers of the Southern Manifesto and a frequent speaker at Citizen Councils meetings, declared that the fight to preserve segregation was “[a] fight not only to maintain and perpetuate the laws, customs, traditions and the culture of our Southern way of life, but to restore and revitalize the Republican form of government which is the greatest of our heritages from the past.”³¹⁴

Like these more moderate groups, the Klan articulated its mission in nationalist and constitutional terms. “Our fight is for racial integrity and Constitutional Government,” the Klan declared.³¹⁵ As in earlier periods, Klan bylaws declared that it was committed “to protect and defend the Constitution of the United States of America.”³¹⁶ Yet while other groups supporting segregation argued that the Constitution protected the right of a state to choose segregation, the Klan asserted that white rule was essential to carrying out the Constitution. As one Klan newspaper put it: “We must keep this a White Man’s country. Only by doing this can we be faithful to the foundation laid by our forefathers.”³¹⁷ The Klan articulated an ideology that placed white rule at the center of American history and the Constitution. The

314. James O. Eastland, *We’ve Reached Era of Judicial Tyranny: An Address Before the State-Wide Convention of the Association of Citizens’ Councils of Mississippi*, Jackson 14–15 (Dec. 1, 1955); see also *Council Actions in Louisiana*, THE CITIZENS COUNCIL at 4 (June 1957) (“[T]he cause to which a million true, patriotic Americans have dedicated themselves is a critical struggle to save the Constitution of the United States and to preserve for every American citizen his inalienable, God-given rights.”). Medford Evans, the editor of the Citizens Council paper, similarly expounded on the national implications of the fight for segregation: “Since the Southern Way has become the American Way, an attack on the Southern Way is an attack on the American Way.” CRESPIANO, *infra* note 359, at 51.

315. CUNNINGHAM, *supra* note 309, at 61.

316. Art. II, § 2, *Constitution and Law of the United Klans of America* (1965), in SOUTHERN POVERTY LAW CENTER COLLECTION, Duke University, Box 3, Ku Klux Klan General File.

317. *Ideals of the Ku Klux Klan*, 2 THE CLANSMAN, 3 (1967); see also *White Knights of the Ku Klux Klan*, KLAN LEDGER, 2 (Nov. 14, 1966) (“We absolutely believe in White Supremacy, because America was discovered by White men after an extremely long and dangerous ocean voyage. Was settled originally one hundred percent by White people from overcrowded Europe. To be a White man’s Country. A-Men. Only White men fought and suffered and only White men’s blood was shed. To win our independence from England, and become the United States of America.”).

mission statement of the Confederate Knights of the Ku Klux Klan—the “Kreed”—declared:

I believe that God created races and nation, committing to each a special destiny and service; that the United States through its white, Protestant citizens holds a Divine commission for the furtherance of white supremacy and the protection of religious freedom; that its Constitution and laws are expressive of the Divine purpose.³¹⁸

The Klan thus articulated a belief that God created the United States and gave its white Protestant citizens the mission of preserving white supremacy, a mission expressed in the Constitution. Similar statements can be found from various Klans throughout the civil rights era.³¹⁹ For the Klan, white rule was not merely a legitimate policy choice. It was ordained by God and the Constitution.

The constitutional ideology developed by the Klan in the 1950s and 1960s was not only more radical than the ideology of other segregationists, it was also more radical than the ideology articulated in earlier Klan eras. The Klan of the 1920s understood the Constitution to protect conventional principles like self-determination, liberty, and equality.³²⁰ It asserted that these principles arose out of white Protestant culture and that other peoples lacked the ability to embrace these values.³²¹ In contrast, the Klan of the civil rights era came to believe that white supremacy itself was the nation’s central constitutional principle. While earlier Klan eras had claimed that the Constitution was the product of white Protestant culture and was best

318. KLAN, CONFEDERATE KNIGHTS OF THE KKK (circa 1960s).

319. See, e.g., *White Knights of the KKK of Miss.*, THE KLAN LEDGER, Early Autumn Edition 3 (1964) (“our Constitution is Christian.”); *Ideals of the Ku Klux Klan*, THE CLANSMAN, Vol 2, No. 1, p.3 (1967) (“We magnify the Bible – as the basis of our Constitution, the foundation of our government, the source of our laws, the anchor of our liberties, the most practical guide of right living and the source of all true wisdom.”); PRINCIPLES AND PURPOSES OF THE KNIGHTS OF THE KU KLUX KLAN (n.d.) (“The Flag, the Constitution and the Holy Bible are the keystones of Klan principles.”).

320. See *supra* notes 73–184 and accompanying text.

321. See *id.*

understood by white Protestants, the Klan of the civil rights era declared that the Constitution was centrally devoted to white rule.

In the ideology developed by the Klan during the civil rights era, America simply had no place for those who were not white Protestants. They were wholly outside of the American tradition. As one Klan newspaper put it, for an African American, “The Pilgrim father can never be his fathers,” and “the signers of the Declaration can never be his ancestors.”³²² The Klan thus declared that an African American can never be a true American because “no man can bestow upon him an inheritance that is not his.”³²³

Like other segregationists, the Klan described the civil rights movement as an essentially alien force that sought to destroy America, but the Klan was even more emphatic in identifying those fighting for civil rights as enemies of the nation.³²⁴ Mainstream segregationists frequently charged that the civil rights movement was connected to Communism or was playing into the hands of Communists, but the Klan proclaimed that the civil rights movement was literally directed by international communists.³²⁵ Frequently

322. United Klans of America, *White Christians of the South: The Most Persecuted Minority in the Nation!*, FIERY CROSS, Feb. 1968, at 25.

323. *See id.* at 25.

324. *See, e.g.*, MCMILLEN, *supra* note 297, at 195 (“Almost from its inception, Council spokesmen equated the drive for Negro equality with a Marxist plot to destroy America . . .”); *The Principles of the United Klans of America, Inc.*, (Knights of the Ku Klux Klan, Tuscaloosa, AL), 1965 (“[T]hose who are seeking to destroy [the public schools through integration] are enemies of our Republic and are unworthy of citizenship.”).

325. Senator Max Eastland of Mississippi asserted in 1955 that in *Brown v. Board of Education*, “the Court has responded to a radical, pro-Communist political movement in this country.” *See* Eastland, *supra* note 316, at 5. This movement, Eastland asserted, is “bent upon the destruction of the American system of government, and the mongrelization of the white race.” *Id.* White Citizens Councils also frequently described the civil rights movement as a communist front and declared that segregation must be maintained because it was “only a short step from integration to communization.” *Only a Short Step from Integration to Communization*, THE CITIZENS’ COUNCIL, Aug. 1957,1; *see* Medford Evans, *Forced Integration Is Communism in Action*, THE CITIZENS’ COUNCIL, Sept. 1962 at 6, 11 (desegregation is part of “a strategic campaign of the world communist movement”); *see also* Tom Ethridge, *Mississippi Notebook*, THE CITIZENS’ COUNCIL, Oct. 1955 at 8; *Forty Reasons for Segregation* (Md. Klan, n.d.) (Pamphlet) (“Civil Rights’ laws and court decisions are nothing more than a cover-up and spearhead for more Socialism and Communism.”). According to a 1965

using the terms “Jews” and “Communists” interchangeably, the Klan believed that Jews were running the Communist conspiracy that controlled the civil rights movement.³²⁶ To the Klan, the real villains of the civil rights movement were not African Americans, whom Klan members considered dupes of international communists, but were Jews, the nation’s true enemies, who had orchestrated the civil rights movement as a means of attacking the United States.³²⁷ As one Klan flyer put it, Jews are “trying to destroy everything our forefathers fought for and they hope to some day soon fly the red flag over our land.”³²⁸

Gallup poll, almost half of all American adults believed that Communists had been very involved in civil protests. *See Public Opinions Polls on Civil Rights Movement, 1961–1969*, http://www.crmvet.org/docs/60s_crm_public-opinion.pdf. As Eldon Lee Edwards, founder of U.S. Klans, Knights of the Ku Klux Klans, declared:

The good [niggers] don’t want this integration any more than we do. It is the NAACP that is trying to jam it down our throats, and it is backed by Jew money. . . . [It is] Russia’s intention to Mongrelize the world, to mix the white race with the black so as to bring it under Communist control.

Rich, *supra* note 293, at 34-35.

326. *See, e.g., Invisible Empire*, (United Klans of America, Tuscaloosa, AL); *see also Why the Ku Klux Klan*, WEEKLY REPORT (United Klans of America, Tuscaloosa AL) (“Now that the International Jews are entering the final phase of their conquest of the United States and the entire world for Communism, let all patriotic Christian Anglo-Saxon men unite behind the Fiery Cross in one giant Klan as your forefathers did to fight against, and stop the tyranny of Jew controlled Communism before it is too late.”).

327. *See, e.g., Oren F. Potito, Stand Your Ground—Segregate or Integrate*, THE CLANSMAN 6 (“Integration is a Communist, Jewish conspiracy.”); Flyer, *Wake Up*, (“Friends, do you think the ‘freedom’ workers who are invading our state are here out of a heart full of love? Make no mistake! There is only one thing that brought them here and one thing will continue to bring them here. The dollar. The JEWISH dollar.”).

328. *See Flyer, Wake Up; see also White Knights of the Ku Klux Klan of Mississippi, Special Presidential Edition, KLAN LEDGER*, April 1965, http://www.lib.usm.edu/legacy/spcol/exhibitions/anti-comm/civil_rights-10.html (“Why do you always pounce upon the Christian Klan at every opportunity, [President] Johnson? Is it because the atheistic communists who own and control you have ORDERED you to persecute and destroy us?”).

Because it considered white rule a foundational national principle, the Klan considered the threat posed by the civil rights movement to be more dire than other segregationists saw it. While mainstream defenders of segregation asserted that the conflict over segregation would dramatically affect the nation's future, the Klan asserted that the nation's very existence was at stake.³²⁹ As James Venable, leader of the National Knights of the Ku Klux Klan, proclaimed: "We of the Klan and the peoples of the west face the crisis of the ages—the very survival of that which we hold so dear, the basic elements of what we so rightly call civilization."³³⁰

Depicting the civil rights movement as a fundamentally alien force devoted to the nation's destruction, the Klan portrayed its own mission as a patriotic crusade to carry on the work of the Founding Fathers. As one Klan group put it, "Let no man forget that the White Knights of the Ku Klux Klan are the Physical and Spiritual heirs of the American Revolution, that Anglo-Saxon triumph of Justice and Equity."³³¹ In the Klan's telling of American history, earlier eras of the Klan had saved the nation, and the new Klan would do it again.³³² In this crusade, the Klan believed that it alone recognized the

329. See Eastland, *supra* note 316, at 2 ("The entire future of this country is at issue.").

330. *Ideals of the Ku Klux Klan*, THE CLANSMAN, 3 (1967),

331. White Knights of the Ku Klux Klan of Mississippi, *Special Greenwood, LeFlore County Edition*, KLAN LEDGER, Summer 1966, at 1.

332. See e.g., *The Principles of the United Klans of America, Inc.* (Knights of the Ku Klux Klan, Tuscaloosa, AL), 1965 ("The traditions of America have well-nigh been buried under the avalanche of foreign ideas and ideals. But for the arising of the Ku Klux Klan, they would now have been but a memory in some parts of our country."); Robert M. Shelton, *Introduction to the Knights of the Ku Klux Klan* (n.d., 1960s) (Reconstruction-era Klan was "the saviour of the South, and, thereby the saviour of the nation; for had there been no ride of the Ku Klux Klan there would not today be fifty stars in the flag that graces the dome of our Nations Capitol."); *Some Questions that Need Straight Answers*, (United Klans of America, Inc. Knights of the Ku Klux Klan, Natchez, Mississippi) n.d., circa 1966 ("The Klansmen have delivered the South twice before and the time has come for them to do it again."). The Klan believed that Klansmen had been crucial to American history long before the Klan was created in 1866. *Back Off Heathens* (United Klans of America, Inc. Knights of the Ku Klux Klan, Columbus, Mississippi) (n.d.) ("If you care to look into the truth of things—you will realize that they were there on the Delaware wiyh the Father of our Country."). Indeed, the Klan traced itself back to time immemorial: "The Invisible Empire, in a very loose and generalized sense, may be said to have existed since the dawn of civilization whenever men banded

true threat posed by the civil rights movement and that it alone was willing to do what was necessary to protect the Constitution.³³³

C. *The Constitution and Klan Violence*

What most distinguished the Klan from other groups defending segregation was its open embrace of extra-legal violence.³³⁴ The Southern Manifesto, signed by the South's congressional delegation, called for resistance "by any lawful means."³³⁵ White Citizens Councils routinely disavowed Klan violence as the work of "ruffians."³³⁶ In contrast, the Klan openly called for violence against supporters of the civil rights movement. As one Klan newsletter declared, "all those who attempt to destroy the Foundations of American Liberty and Justice must themselves be destroyed by the Americans."³³⁷

The Constitution played a central role in the Klan's justifications for violence. By depicting the civil rights movement as a foreign movement

themselves together to fight for liberty and freedom." United Klans of America, *The Ku Klux Klan and Its Story*, FIERY CROSS, 1967 at 2.

333. See, e.g., White Knights of the Ku Klux Klan of Mississippi, *Special Greenwood, LeFlore County Edition*, KLAN LEDGER, Summer 1966 ("As long as the Free American Spirit of the People of Mississippi remains unbroken, we will be a source of inspiration to all Free Men everywhere. This upsets the communists. They are out to destroy America and crush the American Spirit. Mississippi is their last great political obstacle. We stand almost alone between these enemies of Christian Civilization and the Total Barbarism which is their goal for America.").

334. See CUNNINGHAM, *supra* note 309, at 102 ("The klan's distinctiveness came not from its defense of Jim Crow-style white supremacy, as that goal was pursued in various ways by a range of non-vigilantist bodies across the South. The [Klan] stood apart from many of these more temperate segregationist vehicles largely because of its militancy, its willingness to engage in terroristic action to preserve the racial status quo."). The Klan's open support for violence also distinguished the civil rights-era Klan from the Klan of the 1920s, which had sought mainstream respectability and publicly denied any involvement in violence. See *supra* text accompanying notes 203–223.

335. See Southern Manifesto, *supra* note 295, at 4460.

336. See MCMILLEN, *supra* note 297, at 360–61 (declaring that the "outstanding accomplishment of the Citizens' Council" was the "channeling of popular resistance to integration into lawful, coherent and proper modes.").

337. White Knights of the Ku Klux Klan of Mississippi, *Special Greenwood, LeFlore County Edition*, KLAN LEDGER, Summer 1966.

devoted to the destruction of the Constitution, and thereby the destruction of the nation, the Klan asserted that violence was justified as a patriotic act of national defense. The Klan claimed that it was “the incumbent duty of every American to defend the Spiritual Ideals and Principles upon which this Nation was founded, even at the cost of his life.”³³⁸ As the civil rights movement progressed in toppling segregation, the Klan grew more emphatic in declaring that whites owed a duty to kill and die to defend the Constitution: “The issue is clearly one of personal, physical SELF-DEFENSE or DEATH for the American Anglo-Saxons. The Anglo Saxons have no choice but to defend our Constitutional Republic by every means at their command, because it is, LITERALLY, their Life. They will die without it.”³³⁹

Violence was justified, the Klan increasingly argued, because the Constitution was under attack. Jewish Communists were directing the civil rights movement and seeking “to destroy everything our forefathers fought for,” one Klan flyer declared.³⁴⁰ Klan members believed that they were “bound by oath to preserve, protect and defend the Constitution of the United States of America by reason and by force, if necessary.”³⁴¹ As the civil rights movement succeeded, the Klan declared that the time for half-measures was over; in the words of Robert Shelton, Imperial Wizard of the United Klans of America, the fight to save America had become a “total war.”³⁴²

Although the Klan bombed churches, killed children, and attacked numerous unarmed victims, Klan members considered the civil rights movement to be the aggressor, while Klan violence was *defensive* in

338. *Id.* at 2.

339. *My Fellow American: Here Are Twenty Reasons WHY You Should if qualified, join, aid and support the White Knights of the Ku Klux Klan of Mississippi* (White Knights of the Ku Klux Klan of Mississippi, Mississippi) (n.d.).

340. Flyer, *Wake Up*; see also Tony LaRicci, Grand Dragon, Knights of the Ku Klux Klan, *What's Happening to the Land of the Free* (Maryland), circa 1960s (“We have seen a vast liberal movement shatter the great American dream and slowly destroy the heritage that was paid for on the battle fields around the world. A heritage that we should be defending to the death, if need be.”).

341. *Activities of Ku Klux Klan Organizations in the United States*., *Hearings Before the H. Comm. On Un-American Activities*, 89th Cong. 2759 (1966) (testimony of Thomas A. Gunter).

342. United Klans of America, *Robert M. Shelton's Homecoming Address*, FIERY CROSS Jan. 1970, at 11; see also White Knights of the Ku Klux Klan of Mississippi, *Special Greenwood, LeFlore County Edition*, KLAN LEDGER, Summer 1966, at 1.

nature.³⁴³ The Klan adopted an expansive notion of self-defense under which violence was justified for the “self-defense for our homes, our families, our nation and Christian Civilization.”³⁴⁴ In 1964, when the White Knights of the Ku Klux Klan of Mississippi kidnapped and murdered civil rights workers James Chaney, Andrew Goodman, and Michael Schwerner, the group’s newsletter insisted that the victims were “Communist revolutionaries . . . actively working to undermine and destroy Christian Civilization” and declared that the murders were justifiably performed by “American Patriots who are determined to resist Communism by every available means.”³⁴⁵

Although its violence was conducted without legal authority, the Klan nonetheless considered itself a force for law and order.³⁴⁶ It believed that violence served the higher duty of defending the Constitution in the face

343. See, e.g., *A Message from the Knights of the Green Forest, Inc.* (Knights of the Green Forest, Tupelo, Mississippi), circa 1960s (“We the members of the Knights of the Green Forest,” read one Klan flyer, “do hereby declare unto the people of the world that we do not condone nor advocate violence offensively.”); see also, e.g., White Knights of the Ku Klux Klan of Mississippi, *Special Greenwood, LeFlore County Edition*, KLAN LEDGER, Summer 1966, at 2 (“We are absolutely opposed to street riots and public demonstrations of all kinds. . . . We operate solely from a position of self-defense for our homes, our families, our Nation and Christian Civilization.”).

344. White Knights of the Ku Klux Klan of Mississippi, *Special Greenwood, LeFlore County Edition*, KLAN LEDGER, Summer 1966, at 2; see also Rich, *supra* note 293, at 120 (explaining that to members of the Klan, self-defense “applied to the culture, country and Americanism. The entire rationale of the Klan hinged upon the idea of the organization as a means of preserving a way of life which was under attack.”).

345. See, e.g., White Knights of the Ku Klux Klan of Mississippi, *Special Neshoba County Fair Edition*, KLAN LEDGER, Aug. 1964.

346. See, e.g., THOMAS A. TARRANTS III, *THE CONVERSION OF A KLANSMAN: THE STORY OF A FORMER KU KLUX KLAN TERRORIST* 73 (1979) (“Although my radical activities at times brought me into open conflict with the law of the land and those enforcing it, I was basically pro-law and pro-law enforcement.”); *The Principles of the United Klans of America, Inc.* (Knights of the Ku Klux Klan, Tuscaloosa, AL), 1965 (“WE BELIEVE in law and order.’ In other words, the Klan believes in keeping the laws and in enforcing the laws.”); Robert M. Shelton, *Introduction to the Knights of the Ku Klux Klan* at 2 (n.d., circa 1960s) (“[The Klan] is a strictly law-abiding organization and every member is sworn to uphold the law at all times and to assist officers of the law in preserving peace and order whenever the occasion may arise”).

of tyranny. As the federal government increasingly supported civil rights—by sending in troops to enforce desegregation orders, and by enacting and enforcing federal civil rights laws—the Klan increasingly considered the federal government, like the civil rights movement, to be a tyrannical force controlled by Communists. This too provided a justification for Klan violence.³⁴⁷

In justifying its violence as a defense against federal tyranny, the Klan articulated what has more recently become known as the insurrectionist theory, the claim that the Constitution guarantees a right to use violence when the government acts tyrannically.³⁴⁸ As the White Knights of the Ku Klux Klan asserted:

If the minions of material governmental authority threaten, attempt to, or use physical force and violence to enforce compliance with some letter of law which is in clear conflict with the Constitution . . . Private Citizens of America have a right to oppose them with physical force, using the

347. See White Knights of the Ku Klux Klan of Mississippi, *Thomas Gunter Exhibit No. 3*, KLAN LEDGER, July 4, 1964 (“If those who sit on the bench of the Supreme Court depart from the Constitution then they are NOT the Supreme COURT. If the cravens who sit in the seats of Congress depart from the Constitution – then they are NOT the Congress. If the man who sits in the White House departs from the Constitution – then he is NOT the President. THIS principle is the Spirit of American Liberty. It is what government by LAW and not by men MEANS.”).

348. In recent decades, gun rights advocates have claimed that the Second Amendment protects a right to bear arms for the purpose of giving individuals the ability to resist government tyranny. See, e.g., JOSHUA HORWITZ & CASEY ANDERSON, *GUNS, DEMOCRACY, AND THE INSURRECTIONIST IDEA* (2009); Carl Bogus, *The Hidden History of the Second Amendment*, 31 U.C. DAVIS L. REV. 309, 390–404 (1998); Charles J. Dunlap, *Revolt of the Masses: Armed Citizens and the Insurrectionary Theory of the 2nd Amendment*, 62 TENN. L. REV. 643 (1995); Dennis Henigan, *Arms, Anarchy and the Second Amendment*, 26 VALPARAISO L. REV. 107 (1991); David B. Kopel, *It Isn't About Duck Hunting: The British Origins of the Right to Arms*, 93 MICH. L. REV. 1333, 1333 (1995); Thomas M. Moncure, Jr., *The Second Amendment Ain't About Hunting*, 34 HOW. L.J. 589 (1991). The theory has been embraced by the National Rifle Association. See WAYNE LAPIERRE, *GUNS, CRIME & FREEDOM* 7 (1994) (“[T]he people have the right. . . to take whatever measures necessary, including force, to abolish oppressive government.”).

Constitution and the Supremacy of the Will of Almighty God
as their Authority.³⁴⁹

Believing that it was enforcing the true meaning of the Constitution in the face of federal tyranny, the Klan declared that private violence was justified against federal officials, churches, synagogues, and anyone else perceived as supporting the civil rights movement, because the movement was a tyrannical force that sought to impose Communist rule and deprive the people of their constitutional rights.³⁵⁰

Although mainstream defenders of segregation like the White Citizen Councils disavowed the extra-legal violence perpetrated by the Klan,³⁵¹ the differences between the two groups in their support of violence should not be exaggerated. Many white Southerners were members of both organizations, including Byron De La Beckwith, who was convicted of the assassination of Medgar Evers.³⁵² Although White Citizens Councils condemned violence as a strategy, they blamed the civil rights movement, not the Klan, for white violence.³⁵³ As the director of the South Carolina Citizens Council declared, if white segregationists committed violence, “every home that is destroyed, every drop of blood that is spilled will be on the hands of racial agitators and those who encourage them. . .”³⁵⁴ While expressly disavowing violence, mainstream segregationists considered violence an understandable response to the provocation by the civil rights movement. “Violence is caused by frustration,” declared Robert Patterson, the founder of the White Citizens Council, and white southerners were understandably frustrated because segregation and the American way of life were threatened.³⁵⁵ The Citizens Councils aimed to alleviate white frustration

349. *Activities of Ku Klux Klan Organizations in the United States, Hearings Before the H. Comm. On Un-American Activities*, 89th Cong. 2924 (1966) (testimony of Sam Holloway Bowers, Jr.).

350. *See supra* text accompanying note 331.

351. *See supra* text accompanying note 341.

352. ADAM NOSSITER, *OF LONG MEMORY: MISSISSIPPI AND THE MURDER OF MEDGAR EVERS* 90 (1994).

353. *Local Councils Throughout South Have Busy Month of Meetings; Big Membership Drives Planned*, *THE CITIZENS' COUNCIL*, Apr. 1960, at 3 (quoting Farley Smith, executive director of the South Carolina White Citizens Council).

354. *Id.*

355. Thomas R. Waring, *Private Citizens Formed Citizens Councils*, *THE CITIZENS COUNCIL*, Nov. 1955, at 1 (quoting Robert Patterson).

by showing that they could “protect [their] interests by lawful means.”³⁵⁶ The unspoken implication was that violence would indeed be justified if lawful efforts to defend segregation failed.³⁵⁷

The difference between the Klan and mainstream segregationists over the use of violence shrinks further when one recognizes that, while establishment groups like the White Citizens Councils rejected *private* violence, they strongly endorsed *state-sponsored* violence against civil rights protesters. While mainstream segregationists may not have openly endorsed the Klan's violence, they supported the brutal tactics frequently used by city police departments, such as the use of fire hoses and dogs employed in 1963 by the Birmingham Police Department under the direction of Bull Connor.³⁵⁸ Indeed, state officials frequently worked directly with the Klan to support private violence, such as when the Birmingham police allowed a white mob to descend on Freedom Riders in 1961, or when the Philadelphia, Mississippi, police gave the Klan custody of civil rights workers James Chaney, Andrew Goodman, and Michael Schwerner.³⁵⁹ Even when they were not personally involved in Klan violence, state and local officials were complicit in Klan violence by their failure to prosecute Klan members for their crimes.³⁶⁰

More generally, the Klan and more mainstream segregationists shared the conviction that they had a right to defy federal laws that conflicted with their personal understanding of the Constitution. In resisting school desegregation, state and local leaders developed theories supposedly

356. *Id.*

357. In fact, Council members sometimes were explicit in declaring that violence would be justified after the failure of lawful resistance. As one council member said, if the Council failed in its fight to prevent integration of a local swimming pool and African Americans were to swim in the pool, “I figure any time of one them gets near the pool, we can let some redneck take care of him for us.” JOSEPH CRESPIANO, *IN SEARCH OF ANOTHER COUNTRY: MISSISSIPPI AND THE CONSERVATIVE COUNTERREVOLUTION* 26 (2007).

358. CAGIN & DRAY, *supra* note 309 at 206.

359. *See id.* at 109–111.

360. As James Venable, leader of the National Knights of the Ku Klux Klan, told a Klan rally: Klan violence to defend segregation was not really unlawful because “You’ll never be able to convict a white man that killed a nigger what encroaches on the white race in the South.” *Political Power Claimed*, N.Y. TIMES, Sept. 6, 1964 at 34; *see also* Rich, *supra* note 293, at 88 (“[O]fficial reaction to violence often indicated an implicit sanction of Klan actions as well as beliefs”).

grounded in the Constitution for their refusal to follow federal law. Chief among them was the theory of interposition, which invokes a supposed state right to resist laws deemed unconstitutional by state officials.³⁶¹ Eight states adopted interposition resolutions that declared that *Brown* had no effect within the state.³⁶² Virginia's interposition resolution, for instance, vowed to "use all 'honorable, legal and constitutional' means . . . to 'resist this illegal encroachment on our sovereign powers.'"³⁶³

The Klan's defense of violence simply took interposition one step further. Just as the states asserted a right to defend their citizens against unconstitutional federal actions, the Klan asserted the right of every citizen to take the law into his own hands if the government acted unconstitutionally.³⁶⁴ While white moderates argued that state and local officials could defy federal law when they deemed federal law oppressive, the Klan declared that private citizens had the same right to defend themselves against oppression, even when that oppression took the form of peaceful protesters demanding equal rights.³⁶⁵

D. The Demise of the Third Klan

Over the course of the 1960s, it slowly became apparent to white Southerners that the civil rights movement was winning. Protests across the South, and the often brutal responses by Southern officials, galvanized public opinion.³⁶⁶ Congress responded by enacting a series of laws that prohibited

361. As Mark Tushnet has explained, interposition theory posits that "[i]f a state disagreed on constitutional grounds with the national government, it could 'interpose' its sovereign power between the national government and its people, thereby effectively nullifying the national action." MARK V. TUSHNET, *MAKING CIVIL RIGHTS LAW: THURGOOD MARSHALL AND THE SUPREME COURT 1936–1961* 240 (1994).

362. Davison M. Douglas, *The Rhetoric of Moderation: Desegregating the South During the Decade After Brown*, 89 NW. U. L. REV. 92, 93 n.5 (1994) (collecting citations).

363. LUCAS A. POWE, JR., *THE WARREN COURT AND AMERICAN POLITICS* 60 (2000) (quoting S.J. Res. 3, 1956 Gen. Assemb., Reg. Sess., 1956 Va. Acts 1213, 1215).

364. *See supra* text accompanying note 350.

365. *See id.*

366. MICHAEL J. KLARMAN, *FROM JIM CROW TO CIVIL RIGHTS: THE SUPREME COURT AND THE STRUGGLE FOR RACIAL EQUALITY* 385–442 (2004).

race discrimination in employment, public accommodations, voting, and housing, and it denied federal funds to any schools that engaged in discriminatory practices.³⁶⁷ White resistance slowly crumbled. White Citizens Councils faded from the scene.³⁶⁸ White political and business leaders came to accept the defeat of segregation and were working, often reluctantly, within a legal system that prohibited race discrimination.³⁶⁹ In the new era, a social norm had developed that rejected open expressions of white supremacy.³⁷⁰

The Klan's campaign of violence to defend the vision of a white nation governed by a white Constitution had failed, and by the end of the 1960s the Klan was in disarray. Although the Klan had started the civil rights era as part of a unified coalition of white organizations fighting to preserve white rule, by the end of the 1960s, it had become politically isolated, a last lonely voice fighting for segregation and white supremacy.³⁷¹ At the same time, the FBI had launched the COINTELPRO operation to infiltrate and weaken Klan groups, an operation that led to the imprisonment of many Klan leaders.³⁷² By 1971, when COINTELPRO ended, total membership in the Klan had fallen to less than 5000 members.³⁷³

The Klan was at a crossroads. For the first time, the Klan had failed to protect white power. With the dawn of the 1970s, white supremacists began to look for new solutions. For some, this meant rejecting the Klan's traditional embrace of patriotism and a constitutional mission.

367. Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241; Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 437; Civil Rights Act of 1968, Pub. L. No. 90-284, 82 Stat. 73.

368. OXFORD ENCYCLOPEDIA OF AMERICAN POLITICAL AND LEGAL HISTORY 383, 384 (Donald T. Critchlow & Philip R. VanderMeer, eds.) (2012) (describing the downfall of the White Citizens' Councils).

369. John Drabble, *From White Supremacy to White Power: The FBI, COINTELPRO-WHITE HATE, and the Nazification of the Ku Klux Klan in the 1970s*, 48 in AMERICAN STUDIES 49, 50 (2007).

370. See Charles E. Case & Andrew M. Greeley, *Attitudes Toward Racial Equality*, 16 HUMBOLDT J. SOC. REL., 67, 69 fig.1 (1990) (compiling survey results on public attitudes toward racial equality).

371. See Rich, *supra* note 293, at 124.

372. See CUNNINGHAM, *supra* note 309, at 184-213.

373. Drabble, *supra* note 371, at 56.

IV. WHITE SEPARATISM AND THE CONSTITUTION: THE KLAN FROM THE 1970S-TODAY

In the early 1970s, the Klan was declared dead again.³⁷⁴ Many of its leaders were in jail, its membership had fallen dramatically, and its crusade to save segregation had failed. Some white supremacists began to challenge the Klan's longstanding goal of restoring white power within the existing structure of the United States. Declaring that the United States was irredeemably tainted by Jewish control and was the dedicated enemy of white people, the new vanguard of white separatists argued that whites should seek to create a separate white nation.³⁷⁵ White separatists abandoned the patriotic rhetoric and mission that had always been central to the Klan, including its professed dedication to the Constitution, and embraced instead the symbols and ideology of National Socialism.³⁷⁶ At the same time, some Klan groups have continued to define their mission as the restoration of white power under the true, white meaning of the Constitution. Dedication to the Constitution has thus become a dividing line separating traditional white supremacists from white separatists.

A. *The Nazification of the Klan*

During the 1970s and 1980s, the Klan underwent a "Nazification," a process that, in the words of John Drabble, "transformed a reactionary counter-movement that had failed to preserve white supremacy by terrorizing civil rights organizers and black citizens, into a revolutionary white power movement that inculcated Jews and the federal government."³⁷⁷

The Nazification of the Klan began in 1973 when David Duke formed the Knights of the Ku Klux Klan.³⁷⁸ Handsome, well-dressed, and young, Duke sought to change the image of the Klan, appearing frequently on TV talk shows, where he surprised the hosts with his intelligence and

374. DAVID MARK CHALMERS, *BACKFIRE: HOW THE KU KLUX KLAN HELPED THE CIVIL RIGHTS MOVEMENT* 151 (2003); *see also* Rich, *supra* note 293, at 148–150.

375. *Id.*

376. *Id.*

377. Drabble, *supra* note 371, at 49.

378. TYLER BRIDGES, *THE RISE OF DAVID DUKE* 35–36 (1994); ZESKIND, *supra* note 192, at 34–45.

articulativeness, qualities that were unexpected in a Klan leader.³⁷⁹ Duke also set out to change the Klan's message. In college, Duke had called himself a Nazi and was strongly influenced by William Pierce, the founder of the National Alliance, a white supremacist organization that incorporated many Nazi ideals.³⁸⁰ Pierce believed that the Klan had been too supportive of the existing social and political order. As Pierce had explained:

Traditionally, the Ku Klux Klan has been conservative, parochial, and Christian. It wanted to keep non-Whites "in their place," not separate them geographically from Whites, and it was as suspicious of White "foreigners"—Germans, Poles, Irishmen, Yankees, and just about everyone else—as it was of uppity Blacks. It supported the established social order and parroted the same platitudes as the Jaycees and Lions Clubbers.³⁸¹

Duke agreed with Pierce that the Klansmen should stop being "reactionaries longing to return to a previous era of White racial history."³⁸²

Duke broke with longstanding Klan ideology that framed white supremacy in patriotic terms, under which the Klan had equated the preservation of white power with the preservation of American values. Duke argued that whites should hold no loyalty to the existing governmental system: "We are not fighting to preserve the systems of weakness and degeneration that have led us to this precipice."³⁸³ Instead, Duke argued, loyalty to race alone should be the preeminent concern of white people, not loyalty to the nation.³⁸⁴ Duke believed that once whites recognized that race was preeminent, they could work to form a white nation. "We are warriors," Duke proclaimed, "We will be the iron fist that strikes down the alien plague

379. Tom Snyder of the *Tomorrow Show* said Duke was "intelligent, articulate, charming," and Barbara Walters called him "a very effective spokesman for his cause." BRIDGES, *supra* note 380, at 45–47.

380. BRIDGES, *supra* note 380, at 16, 43; ZESKIND, *supra* note 192, at 36, 41.

381. William Luther Pierce, *Mightier than an Army*, 94 NATIONAL VANGUARD, 2-4 (Apr. 1983). <https://nationalvanguard.org/2016/05/mightier-than-an-army/>.

382. ZESKIND, *supra* note 192, at 40.

383. *Id.*

384. Rich, *supra* note 293, at 171.

around us, and we will be the creative hands that will mold a new society, one that is populated by beings truly in the image of God.”³⁸⁵

Central to Duke’s thinking was his belief that Jewish power formed the core problem facing white people.³⁸⁶ Although the Klan of earlier eras had been rife with antisemitism, Duke made concerns about Jewish power central to the Klan, asserting that it was “the most important issue of our time.”³⁸⁷ As a result of Jewish influence, Duke believed, it was now impossible to restore white power within the existing political system.³⁸⁸ In this view, Duke was strongly influenced by Wilmot Robertson, the pseudonymous author of *THE DISPOSSESSED MAJORITY*, a work of modern scientific racism that Duke praised as “brilliant” and “the most important book since the Second World War.”³⁸⁹ *THE DISPOSSESSED MAJORITY* asserts that the core of the nation’s founding stock had slowly been ousted from power because Jews used their supposed control of the media and levers of public opinion to discourage whites from gaining racial consciousness.³⁹⁰ Robertson believed that Jews had brainwashed whites to betray their race by voluntarily agreeing to relinquish power.³⁹¹ Robertson argued that American culture was in an irredeemable state of degeneracy, due to pervasive Jewish influence and the presence of large numbers of “Unassimilable Minorities.”³⁹²

385. *Id.* at 262 (quoting David Duke, *Duke Speaks Out*, 39 *CRUSADER* 6).

386. *ZESKIND*, *supra* note 192, at 40.

387. *Id.*

388. *Id.*

389. *BRIDGES*, *supra* note 380, at 22.

390. *WILMOT ROBERTSON*, *THE DISPOSSESSED MAJORITY* 195 (1972) (“Jewish hegemony in the United States” derives from having a “race-conscious population” and asserting that “If the Majority were as race-conscious as the Jewish minority and had half as many organizations working for it, Jewish predominance in America would disappear overnight.”).

391. *Id.* at 100 (“Is it not incredible that the largest American population group, the group with the deepest roots, the most orderly and most technically proficient group, the nuclear population group of American culture and of the American gene pool, should have lost its preeminence to weaker, less established, less numerous, culturally heterogeneous, and often mutually hostile minorities? . . . [T]his miraculous shift of power could never have taken place . . . without the active assistance and participation of Majority members themselves.”).

392. *Id.* at 237.

Duke recruited other leaders to the Klan who were steeped in Nazi ideology and believed in the dispossession of the nation's white majority.³⁹³ Under Duke's leadership, the Klan fused longstanding Klan rituals with the symbols of National Socialism.³⁹⁴ Duke's newspaper, *The Crusader*, advertised copies of Hitler's *MEIN KAMPF* and made Holocaust denial a central element of its message.³⁹⁵ Under Duke's leadership, Klan and Neo-Nazi groups found considerable common cause. Klan leaders like Louis Beam, who for a time was one of Duke's lieutenants, attended the annual Aryan Nations conference, which included the Klan ritual of a cross burning before a gathering of both Klansmen in white robes and neo-Nazis dressed in jack boots and leather.³⁹⁶ Other Klan groups soon followed Duke in forming hybrid Nazi-Klan organizations.³⁹⁷



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393. Drabble, *supra* note 371, at 61.

394. *Id.*

395. Rich, *supra* note 293, at 210–11, 219.

396. *Id.* at 308–11.

397. For instance, in 1980, former Nazi party member Frazier Glenn Miller formed a new Klan group, the Carolina Knights, which changed its name to the Confederate Knights of the Ku Klux Klan and later became the White Patriot Party. *Id.* at 300.

Nazi ideology and white separatism made further inroads into white supremacist culture with the publication of *THE TURNER DIARIES*, written by neo-Nazi William Pierce and promoted by Klan newspapers.³⁹⁸ The novel depicts an American government run by liberals, Jews, and African Americans, in which an “Equality Police” seeks to enslave white people and deprive them of their guns and freedoms.³⁹⁹ A cadre of white resistance fighters called the Organization launches a campaign of terrorism that succeeds in gaining control of Southern California.⁴⁰⁰ Once victorious, the white patriots drive out black and Latino residents and kill all of the Jews.⁴⁰¹ To maintain order, the Organization makes a public spectacle by hanging race traitors—white men or women who slept with nonwhites.⁴⁰²

THE TURNER DIARIES inspired the creation of the revolutionary Aryan organization known as the Order, which was based directly on the Organization from the novel.⁴⁰³ Founded in 1983 by Robert Mathews, the Order called on Neo-Nazis and Klansmen to unite to create a separate Aryan nation: “We hereby declare ourselves a free and sovereign people. We claim a territorial imperative that will consist of the entire North American continent north of Mexico.”⁴⁰⁴ Like other white supremacists, the Order described the United States as the “Zionist Occupational Government,” or

398. ANDREW MACDONALD (WILLIAM PIERCE), *THE TURNER DIARIES* (1978).

399. *Id.* at 2 (describing the “Cohen Act” that required citizens to turn in guns); *see also id.* at 29 (describing “the unique historical role of the Jews as the ferment of decomposition of races and civilizations”).

400. *Id.*

401. *Id.*

402. *Id.*

403. ZESKIND, *supra* note 192, at 97. Timothy McVeigh was also inspired by *The Turner Diaries*. In the chapter McVeigh found most significant, the novel’s hero blows up the FBI building using a truck filled with fertilizer and fuel. *Id.* at 399. McVeigh gave away copies of *The Turner Diaries* to any friend who would take it, sold the book at gun shows, and left a quote from the book in his getaway car on April 19, 1995, after he used a fertilizer bomb to blow up the Murrah Building in Oklahoma City, Oklahoma, killing 168 people. *Id.* at 456.

404. KERRY NOBLE, *TABERNACLE OF HATE: SEDUCTION INTO RIGHT-WING EXTREMISM* 188 (2d ed. 2010); *see also* Robert Mathews, *Speech at the National Alliance* YOUTUBE, (Sept. 4, 1983).

ZOG, which it asserted was dedicated to the extinction of the white race.⁴⁰⁵ Members of the Order signed a declaration of war against the United States: “[I]n a land once ours,” they declared, “we have become a people dispossessed. Our heroes and culture have been insulted and degraded. The mongrel hordes clamor to sever us from our inheritance. Yet our people do not care.”⁴⁰⁶

Members of the Order, drawn from Aryan Nations, the National Alliance, and the Klan, soon embarked on a crime spree, in which they stole over \$4 million from banks and armored cars, bombed a synagogue, and murdered radio talk show host Alan Berg.⁴⁰⁷ They distributed the stolen money to other white separatist groups, including Klan groups.⁴⁰⁸ The spree did not last long, as Mathews was killed in a gunfight with a federal SWAT team in December 1984 and dozens of other members of the Order were indicted for a variety of crimes.⁴⁰⁹

While some Klan groups followed Duke's lead and incorporated white separatist and neo-Nazi ideology and symbols, other Klan groups rejected Nazi infiltration. Most prominently, Robert Shelton's United Klans of America (UKA), which had become the largest Klan group during the 1960s, continued to assert that the Klan's core ideology was “Christian Americanism,” under which its goal was to restore what the Klan considered the nation's foundational principles.⁴¹⁰ Shelton rejected Duke as a legitimate part of the Klan, saying that his “entire movement is nothin' in the world but

405. Robert Mathews, *Robert Mathews' Last Letter*, http://www.vanguardnewsnetwork.com/wolzek/1984_BobMathewsLastLetter.html (“[T]here is a small, cohesive alien group within this nation working day and night to make this happen. I learned that these culture distorters have an iron grip on both major political parties, on Congress, on the media, on the publishing houses, and on most of the major Christian denominations in this nation, even though these aliens subscribe to a religion which is diametrically opposed to Christianity.”).

406. Robert J. Mathews, *Robert J. Mathews' Declaration of War*, <http://www.mourningtheancient.com/mathews2.htm>.

407. ZESKIND, *supra* note 192, at 97–99.

408. See BRENT L. SMITH, *TERRORISM IN AMERICA: PIPE BOMBS AND PIPE DREAMS* 85 (1994).

409. BETTY A. DOBRATZ & STEPHANIE L. SHANKS-MEILE, *THE WHITE SEPARATIST MOVEMENT IN THE UNITED STATES: WHITE POWER, WHITE PRIDE!* 193–94 (1997); ZESKIND, *supra* note 192, at 99.

410. Drabble, *supra* note 371, at 57.

the National Socialist White People's Party, or the Nazi Party."⁴¹¹ Jim Blair, Imperial Wizard of the Invisible Empire, agreed with Shelton that the Klan should reject Nazis because they supported totalitarian government, while the "True Klan" supported Christian Democracy.⁴¹²

By the early 1980s, however, membership in hybrid Nazi-Klan groups began to exceed membership in more traditional Klan groups.⁴¹³ As one commentator has described, by 1980, "almost every leader of the nation's Klans was a veteran of at least one neo-Nazi organization. . . . [I]t was becoming more and more difficult to know where the Klan ended and the neo-Nazi movement began."⁴¹⁴

Despite their success in transforming the Klan, many of the Nazi-influenced Klan leaders who rose to power with David Duke in the Klan in the 1970s and 1980s launched new organizations that no longer bear the Klan name. Duke himself left the Klan in 1980 and formed the National Association for the Advancement of White People.⁴¹⁵ Tom Metzger, who worked with Duke during his time with the Klan and became a grand dragon in the California Klan, formed the White Aryan Resistance.⁴¹⁶ Frazier Glenn Miller changed the name of his group, the Carolina Knights of the Ku Klux Klan, to the White Patriot Party.⁴¹⁷ These white separatists concluded that the Klan brand had too many historical associations—including the Klan's historic support for a particular race-based form of American patriotism—to support organizations that disavow loyalty to the United States government.⁴¹⁸

Today, some groups that use the Klan name employ Nazi symbols and espouse white separatism, while other employ patriotic symbols and espouse restoring white rule of the United States.⁴¹⁹ According to recent

411. SIMS, *supra* note 6, at 102.

412. Rich, *supra* note 293, at 315.

413. *Id.* at 303–04.

414. *Id.*

415. BRIDGES, *supra* note 380, at 85.

416. DOBRATZ & SHANKS-MEILE, *supra* note 411, at 50.

417. In September 2015, Miller was convicted of murdering three people at a Jewish Community Center and Jewish retirement center in Kansas City. Diana Reese, *Jury Recommends Death Penalty for White Supremacist Frazier Glenn Miller*, WASH. POST (Sept. 8, 2015).

418. Rich, *supra* note 293, at 345–46.

419. ANTI-DEFAMATION LEAGUE, TATTERED ROBES: THE STATE OF THE KU KLUX KLAN IN THE UNITED STATES 1 (2016) ("Many of the newer Klan groups

studies, the Klan has approximately 3000 members today, far fewer than earlier Klan eras.⁴²⁰ Estimating the number of Klan members has become more difficult, however, because of the significant overlap of groups that employ the white hoods, Confederate flags, and cross-burning rituals traditionally associated with the Klan, and groups that incorporate neo-Nazi ideologies and use Nazi symbols. An organization's use of the Klan name does not entirely indicate its ideology, other than its commitment to white supremacy.

The white supremacist movement today is comprised of two factions: reactionary groups that seek to restore whites to power within the United States, and revolutionary groups that seek to establish a separate white nation. Dennis Mahon, a former Klan leader who joined the White Aryan Resistance, explained how white separatists see these two factions:

By the "Movement" we mean the activities and ideology of most Judeo-Christian, Right-Wing, Anti-Communist, Patriotic groups (C.R.A.P.). The CRAP usually consists of most Klan groups, patriotic Christian churches, patriotic veterans groups, and so on. By Aryan or White Resistance we mean groups like White Aryan Resistance, National Alliance, Church of the Creator, skinhead groups, and some radical white survivalist groups.⁴²¹

To Mahon, the key distinction between white supremacists who are part of the conservative movement and those who are part of the Aryan Resistance lies in their different attitudes toward the government: "'Movement' people believe that the United States' Federal government is basically historically benevolent, that evil or deceived politicians have temporarily taken control of power, and if we can just awaken the masses, we can get our country back."⁴²² Members of the "Resistance," in contrast, believe the federal government has "declared total war against the white race" and for more than

promote a traditional Klan ideology infused with neo-Nazi beliefs, continuing a trend from the early 2000s.").

420. *Id.*

421. DOBRATZ & SHANKS-MEILE, *supra* note 411, at 83 (quoting Dennis Mahon, *What's All this C.R.A.P.? WAR* 6 (Jun. 1994)).

422. *Id.* at 150–51.

a century has “continued its planned genocide of our European homeland
...”⁴²³

B. *White Separatism and the Constitution*

Loyalty to the United States, and in particular dedication to the Constitution, represents a primary dividing line between the reactionary and revolutionary factions of the white supremacist movement. White separatists assert that racial solidarity must take precedence over loyalty to the United States.⁴²⁴ They believe that white people belong to an Aryan nation, while the United States demonstrates the nightmare of multiculturalism.⁴²⁵ In his highly influential “Essays of a Klansman,” Louis Beam argued that the Klan should no longer work for regaining control of the United States, but should instead adopt a new goal: “Our goal—a Racial Nation of and by ourselves—nothing less.”⁴²⁶ Beam declared that Aryans “must now separate ourselves from the mongrel nation that envelops us.”⁴²⁷

To white supremacists who believe that the United States is devoted to the destruction of white power, patriotism of the sort long espoused by the Klan has little appeal.⁴²⁸ White separatists instead call for a revolutionary movement that would wage war on the United States, not try to restore it.⁴²⁹ Louis Beam argued that the Klan could never generate a mass political movement capable of generating peaceful political change, because the majority of white Americans, brainwashed by the Jewish-controlled media, would oppose the Klan.⁴³⁰ Instead, the Klan should recruit a small cadre of

423. *Id.* at 151.

424. *See, e.g.,* David Lane, *The 88 Precepts*, ¶ 41, <http://www.davidlane1488.com/88precepts.pdf>. (“The folk, namely the members of the race, are the Nation. Racial loyalties must always supersede geographical and national boundaries.”).

425. *See id.* at 28.

426. LOUIS R. BEAM, JR., *ESSAYS OF A KLANSMAN* viii (1983).

427. *Id.* at 48.

428. *Id.* at vii (“[T]oday there no longer exists in this country a government for the protection and benefit of the descendants of those who created this Nation. In the place of such a government there now stands a powerful despotism of gullible and sometimes evil men committed to the eventual destruction of the White Race.”).

429. *Id.* at 23.

430. *Id.* at 17.

militant members who would be prepared to take revolutionary action and establish a white nation “by whatever means necessary.”⁴³¹

In rejecting loyalty to the United States, white separatists reject dedication to the Constitution as a guiding principle and touchstone for the white power movement. This shift can be seen in *THE TURNER DIARIES*, one of the central texts of white separatism.⁴³² In the novel, after the heroic white nationalists oust the Jewish-run federal government and create a white ethnic state, they mock conservatives who issue “idiotic proclamations about ‘restoring the Constitution,’ . . . and holding new elections to ‘re-establish the republican form of government intended by the Founding Fathers,’ whatever that means.”⁴³³ As the novel’s narrator explains, it was the Constitution that allowed Jews and blacks to gain power in the first place.⁴³⁴ Constitutional democracy is impossible in a multiethnic state, the narrator explains, especially one in which Jewish control of the media prevents whites from recognizing that their true loyalty lies in racial solidarity, not devotion to a government controlled by their enemies.⁴³⁵

White separatists envision the creation of a white nation that would be guided by purely racial principles. For instance, Aryan Nations issued a “Platform for the Aryan National State,” which envisions a white ethnic state devoted to the principles of national socialism, which would nationalize industry, exile all Jews and non-white persons, and seize control of the press.⁴³⁶ Other white separatists agree that the white ethnic state should be based exclusively on racial considerations and should reject the universalistic principles adopted in the United States Constitution.⁴³⁷

431. *Id.* at 18.

432. Doreen Carvajal, *Group Tries to Halt Selling of Racist Novel*, N.Y. TIMES (Apr. 20, 1996).

433. PIERCE, *supra* note 400, at 173.

434. *Id.* at 173–74 (asking whether conservatives “understand that the Jews have taken over the country fair and square, according to the Constitution”).

435. *Id.* at 173–74.

436. *Platform for the Aryan National State*, ARYAN NATIONS 5–6, <https://archive.org/stream/AryanNationsInfoPack/AN#page/n5/mode/2up>.

437. See, e.g., DOBRATZ AND SHANKS-MEILE, *supra* note 411, at 102 (“[t]he Constitution is therefore a tainted form, especially in the idea that *equality* should be the cornerstone of a government that serves the Aryan people”) (quoting Donald V. Clerkin, *Essay—The Coming Aryan Republic*, *EURO-AMERICAN QUARTERLY* X 1-6 (1989); see generally DOBRATZ AND SHANKS-MEILE, *supra* note

The differing attitudes toward the Constitution among white supremacists can readily be seen by comparing the Nationalist Front and the Knights of the Ku Klux Klan.⁴³⁸ The Nationalist Front is dedicated to white separatism—“The creation of an ethno-state for White people in North America.”⁴³⁹ It declares that the United States government is the enemy of white people, and it urges whites to abandon all loyalty to the United States.⁴⁴⁰ In declaring war on the United States, the Nationalist Front rejects both the specific principles underlying the Constitution and the underlying idea that any set of universal principles could bind together a nation:

We reject the notion of a ‘proposition nation.’ Nations are built on blood, culture, language and traditions; they are organic expressions of a people. The nation must be an embodiment of the will of the people and stand for their best racial, moral and economic interests.⁴⁴¹

Other white separatist groups have rejected devotion to the Constitution in similar terms.⁴⁴²

411, at 97–109 (discussing white separatism); Lane, *supra* note 426, ¶50 (advocating for the installation of a “strongman” to protect racial interests).

438. The Nationalist Front is an umbrella group of white separatist organizations, which includes the National Socialist Movement, a neo-Nazi group; League of the South, a Southern secessionist group; and White Lives Matter. *Membership*, THE NATIONALIST FRONT, <https://www.nfunity.org/membership/>.

439. *Fourteen Points*, THE NATIONALIST FRONT, <https://www.nfunity.org/14-points/>.

440. *Unity Statement*, THE NATIONALIST FRONT, <https://www.nfunity.org/unity/> (“While this government may have at one point represented the noble ideals of our past generations, it now only poses an existential threat to our future generations.”).

441. *Fourteen Points*, *supra* note 441.

442. League of the South, a Southern secessionist group, voices much the same position that nations can only survive if organized around blood and soil, rather than universalistic principles: “The League of the South, unlike the America of the New World Order, is wedded not to a universal proposition: equality, democracy, or the rights of man, but to a real historical order based on place and kin.” *Kith and Kin or a Proposition Nation*, LEAGUE OF THE SOUTH, <http://leagueofthesouth.com/kith-and-kin/>.

In contrast, the Knights of the Ku Klux Klan continue to employ the constitutional rhetoric long used by the Klan in espousing white power. The Knights declare that whites must re-dedicate themselves to what the Knights consider traditional American principles, most centrally the belief that the United States was founded as a white Christian nation.⁴⁴³ Unlike white separatists, the Knights valorize the nation's founders and emphasize their whiteness: "Those who formed the very ideals that we cherish such as freedom of speech, trial by jury, innocent until proven guilty, free enterprise, etc. were of White European heritage."⁴⁴⁴ Like past generations of Klansmen, members of the Knights proudly proclaim their dedication to the Constitution, which they understand is the product of the nation's white heritage and expresses specifically white values.⁴⁴⁵

The differing goals of these two white supremacist factions—on the one hand, the creation of a separatist white ethnic state, and, on the other hand, the restoration of the true, white meaning of the Constitution—have each proven powerful in mobilizing members ready to use violence to achieve their goals. Despite their differences, the two factions of the white supremacist movement share core ideological commitments. Both agree that today the federal government is dedicated to the destruction of white people.⁴⁴⁶ Both identify the supposed Jewish control of the government and media as the central force oppressing white people.⁴⁴⁷

443. *Fellow Patriots*, THE KNIGHTS PARTY, <https://kkk.bz/fellow-patriots/> ("Our need today, more than any time in the history of the U.S., is to thoroughly understand the principles of Americanism.").

444. *Platform*, THE KNIGHTS PARTY, <https://kkk.bz/platform-2/>.

445. *Frequently Asked Questions*, THE KNIGHTS PARTY, <https://kkk.bz/frequently-asked-questions/> ("The Ku Klux Klan was born in America. It pledged to stand for the U.S. Constitution. It demanded the protection and advancement of women and children. And it put Jesus Christ at the forefront of all beliefs . . . As a modern organization tackling the tough issues with boldness and sincerity, the Knights Party proudly stands for the principles of the Ku Klux Klan.").

446. Thomas Robb, the leader of the Knights, has been a leading voice describing federal policies as "[w]hite genocide," and the Knights have identified ending white genocide as its top priority. *Id.*

447. While members of the Nationalist Front express this position explicitly, traditionalist groups like the Knights frequently make slightly more subtle references to "internationalists," "globalists," and "bankers." *Compare Unity Statement*, *supra* note 442 ("Globalism and Jewish financial power wants to destroy all ethnicities, all cultures and all religions to break down borders in order to have a

Recognizing their common cause, reactionary groups like the Knights increasingly work with revolutionary groups, like the Nationalist Front. The “Unite the Right” rally held in August 2017 in Charlottesville, Virginia, was expressly called to bring together the “movement” and “resistance” wings of the white power movement, along with fellow traveler alt-right groups.⁴⁴⁸ Members of both the Nationalist Front and the Knights attended, as did such white supremacist luminaries as David Duke and Richard Spencer.⁴⁴⁹ Whether they are for the Constitution or against it, they know that their true allies are fellow white supremacists, and they know that they face a common enemy. Whether wearing Klan robes or bearing swastikas, or both, they marched together in Charlottesville, holding tiki torches and chanting “white lives matter,” “blood and soil,” and “Jews will not replace us.”⁴⁵⁰

CONCLUSION: THE CONSTITUTION AND NATIONALIST VIOLENCE

What does it say about the United States that for over 150 years the nation’s most prominent hate group has considered its campaign of violence and terrorism to be a defense of the Constitution?

The Klan’s declaration of a constitutional mission resonates with a longstanding American belief that the Constitution is the defining text of American national identity. That belief goes back at least to 1850, when Daniel Webster declared that the Constitution is “all that gives us a national

New World Order under their control.”), *with The KKK and the Federal Government*, THE KNIGHTS PARTY, <http://kkk.bz/the-kkk-and-the-federal-government/> (“those who rule as Republicans or Democrats have twisted the laws to suit their own greed, to please the internationalists, and to buy votes by promising to keep intact programs which unfairly promote minority interests over white interests.”).

448. See Dara Lind, *Unite the Right, the violent white supremacist rally in Charlottesville, explained*, VOX (Aug. 14, 2017), <https://www.vox.com/2017/8/12/16138246/charlottesville-nazi-rally-right-uva>.

449. Sheryl Gay Stolberg & Brian M. Rosenthal, *Man Charged After White Nationalist Rally in Charlottesville Ends in Deadly Violence*, N.Y. TIMES, Aug. 12, 201.

450. *Deconstructing the symbols and slogans spotted in Charlottesville*, WASH. POST (Aug. 18, 2017); Emma Green, *Why the Charlottesville Marchers Were Obsessed With Jews*, THE ATLANTIC (Aug. 15, 2017).

character.”⁴⁵¹ The standard model of American nationalism is best characterized as *constitutional nationalism* because the Constitution is understood to embody the principles that bind the nation together.⁴⁵² As Hans Kohn wrote in 1957, in the first book-length examination of the nature of American nationalism: “The American Constitution represents the lifeblood of the American nation, its supreme symbol and manifestation. It is so intimately welded with the national existence itself that the two have become inseparable.”⁴⁵³

Constitutional nationalism can provide “a comforting, even inspiring ideal of national identity. It is [sometimes] said to avoid the irrational hatred and bigotry associated with more primitive forms of ethnonationalism.”⁴⁵⁴ As President George W. Bush declared in his first inaugural address: “America has never been united by blood or birth or soil. We are bound by ideals that move us beyond our backgrounds, lift us above our interests and teach us what it means to be citizens.”⁴⁵⁵ President Obama expressed the same conception of American nationalism in almost the same words, as has every President for the last fifty years, with the possible exception of Donald Trump.⁴⁵⁶ Rather than sectarian, tribal, and Old World forms of

451. MICHAEL KAMMEN, *A MACHINE THAT WOULD GO OF ITSELF: THE CONSTITUTION IN AMERICAN CULTURE* 94 (1994).

452. Goldstein, *Unfit for the Constitution*, *supra* note 29, at 7.

453. KOHN, *supra* note 28, at 8.

454. Goldstein, *To Kill and Die for the Constitution*, *supra* note 29, at 3.

455. George W. Bush, First Inaugural Address (Jan. 20, 2001), in *SELECTED SPEECHES OF PRESIDENT GEORGE W. BUSH* 2, https://georgewbush-whitehouse.archives.gov/infocus/bushrecord/documents/Selected_Speeches_George_W_Bush.pdf.

456. See Barack Obama, Inaugural Address by President Barack Obama (Jan. 21, 2013), <https://obamawhitehouse.archives.gov/the-press-office/2013/01/21/inaugural-address-president-barack-obama> (“[W]hat binds this nation together is not the colors of our skin or the tenets of our faith or the origins of our names. What makes us exceptional—what makes us American—is our allegiance to an idea. . . .”); Ronald Reagan, Labor Day Speech at Liberty State Park, Jersey City, New Jersey (Sept. 1, 1980), <https://reaganlibrary.archives.gov/archives/reference/9.1.80.html> (Americans “came from different lands but they shared the same values, the same dream.”); William Jefferson Clinton, Remarks by the President in Address to the Liz Sutherland Carpenter Distinguished Lectureship in the Humanities And Sciences (Oct. 16, 1995), https://clintonwhitehouse1.archives.gov/White_House/EOP/OP/html/ut.html (“We must be one, as neighbors, as fellow citizens, not separate

nationalism—identified by President Bush as nations “united by blood or birth or soil”—constitutional nationalism teaches that being American means being committed to universal ideals like individual liberty and equality.⁴⁵⁷

The history of the Ku Klux Klan reveals that there is another story to tell about what constitutional nationalism has meant in American life—a more disturbing and violent story. Klan members, like many Americans, believe that white racial identity is an essential part of what it means to be American, and the Klan has translated that belief into familiar constitutional terms, declaring that the Constitution itself embodies the nation’s white identity.⁴⁵⁸

Just as Klan members believe whiteness is an essential part of American identity, others have believed that being Christian is an essential part of what it means to be American, and the nation’s long history of Christian nationalism bears some similarities to the history of the Klan explored here.⁴⁵⁹ In the nineteenth century, Christian nationalists feared that the growing population and power of Catholics, Jews, and freethinkers threatened the nation’s Protestant identity, and so they launched a campaign

camp but family, white, black, Latino, all of us, no matter how different, who share basic American values and are willing to live by them.”); Richard Nixon, Remarks in Williamsburg, Virginia: “The American Spirit” (Oct. 2, 1968), <http://www.presidency.ucsb.edu/ws/index.php?pid=123879>; for a discussion of the civic nationalism of George H.W. Bush, see Mary E. Stuckey, *DEFINING AMERICANS: THE PRESIDENCY AND NATIONAL IDENTITY* 288–334 (2004).

457. See, e.g., Steven G. Calabresi, “*A Shining City on a Hill*”: *American Exceptionalism And The Supreme Court’s Practice of Relying on Foreign Law*, 86 B.U. L. REV. 1335, 1414 (2006) (“Being an American is a function of what you believe and where your loyalties lie. It has nothing to do with your race, or where you were born, or who your parents or ancestors were.”).

458. See THEISS-MORSE, *supra* note 27, at 73, 77, 92–93.

459. In 1793, Reverend John M. Mason of New York preached that “from the Constitution of the United States, it is impossible to ascertain what God we worship, or whether we own a God at all” MORTON BORDEN, *JEWS, TURKS, AND INFIDELS* 59 (1984); JOSEPH S. MOORE, *FOUNDING SINS: HOW A GROUP OF ANTISLAVERY RADICALS FOUGHT TO PUT CHRIST INTO THE CONSTITUTION* 119–51 (2016). In 1844, former President John Quincy Adams, while serving in Congress, submitted a petition to amend the Constitution “so that it shall contain a clear and explicit acknowledgment of the Sovereign of the universe as the God of this nation; an entire and avowed submission to the Lord Jesus Christ as the ruler of this nation.” *JOURNAL*, 28th Cong., 1st Sess. 418 (Feb. 19, 1844). See generally Goldstein, *How the Constitution Became Christian*, *supra* note 29, at 266–70.

to amend the Constitution to add a declaration of the nation's Christian faith.⁴⁶⁰ The nation could preserve its Christian identity, proponents of the Christian amendment argued, if the Constitution contained an expression of Christian devotion.⁴⁶¹ In the twentieth century, however, Christian nationalists began to argue that no constitutional amendment is needed after all. Properly understood, they argue, the Constitution has always been Christian and is best interpreted to protect the nation's Christian identity.⁴⁶²

American history is littered with political movements that have used constitutional rhetoric to advance narrow conceptions of American identity. In the 1850s, the Know-Nothing Party argued that Catholicism was incompatible with the Constitution because Catholics would always owe allegiance to the Pope and not to the Constitution.⁴⁶³ When Congress enacted the Chinese Exclusion Act in 1882, it declared that Chinese people were too foreign to abide by the Constitution.⁴⁶⁴ In the first decades of the twentieth century, the Immigration Restriction League fought to keep out immigrants from southern and eastern Europe that they deemed unfit to participate in America's constitutional republic.⁴⁶⁵ In more recent years, right-wing activists have sought to bar Muslims from immigrating to the United States, by declaring that Islam is incompatible with the Constitution.⁴⁶⁶ Rather than

460. Goldstein, *How the Constitution Became Christian*, *supra* note 29, at 270–79.

461. *Id.* at 279–82.

462. *Id.*

463. See PETER SCHRAG, NOT FIT FOR OUR SOCIETY: NATIVISM AND IMMIGRATION 31–32 (2010) (“The strange, cruel monster of Rome . . . can never amalgamate with the fair and beautiful form of America. Liberty and Despotism are two eternal opposites.”) (quoting “Rome and America Eternal Opposites,” *The True American's Almanac: American Platform Of Principles*, Par. 2 (Feb. 21, 1856), available at <https://glc.yale.edu/rome-and-america-eternal-opposites>).

464. Chinese Exclusion Act of 1882, ch. 123, 22 Stat. 58 (repealed 1943); 13 Cong. Rec. 1742 (1882) (statement of Sen. Jones); see also Gabriel J. Chin, *Segregation's Last Stronghold: Race Discrimination and the Constitutional Law of Immigration*, 46 UCLA L. REV. 1, 22–36 (1998) (reviewing legislative history of the Chinese Exclusion Act).

465. Goldstein, *Unfit for the Constitution*, *supra* note 29, at 26–28.

466. *Id.* at 65–71; CENTER FOR SECURITY POLICY, SHARIAH: THE THREAT TO AMERICA 7 (2010), [https://www.centerforsecuritypolicy.org/upload/wysiwyg/article%20pdfs/Shariah%20-%20The%20Threat%20to%20America%20\(Team%20B%20Report\)%20Web%2009292010.pdf](https://www.centerforsecuritypolicy.org/upload/wysiwyg/article%20pdfs/Shariah%20-%20The%20Threat%20to%20America%20(Team%20B%20Report)%20Web%2009292010.pdf) (declaring that Islam seeks “to

embodying national identity, the Constitution provides a neutral, patriotic-sounding rhetoric for expressing disputed conceptions of who is truly American.

As the history of the Klan also shows, constitutional nationalism entails more than just rhetoric. It provides a ready justification for violence. The duty to kill and die for the nation is a central trope in all nationalist discourse, including constitutional nationalism.⁴⁶⁷ If commitment to the Constitution defines what it means to be American, those who do not embrace whatever principles are said to have constitutional status can be portrayed as un-American, as enemies of the nation, or as aliens who must be excluded and defeated to protect the nation—by force if necessary.

In fact, many of the nation's most notorious acts of domestic terrorism have been undertaken in the name of the Constitution. This includes the 1995 bombing of the Alfred P. Murrah Federal Building in Oklahoma City, in which Timothy McVeigh set off a truck bomb that killed 168 people.⁴⁶⁸ McVeigh, a former Klan member, declared that the bombing was justified because the government had exceeded its powers through overzealous enforcement of federal gun laws.⁴⁶⁹ "I have sworn to uphold and defend the Constitution against all enemies, foreign or domestic, and I will," McVeigh explained, "And I will because not only did I swear to, but I believe in what it stands for in every bit of my heart, soul and being."⁴⁷⁰ As these and many other stories show, movements that are committed to defending the nation's fundamental constitutional principles can make killing and dying a noble and patriotic cause.⁴⁷¹

supplant our Constitution with its own totalitarian framework"); *see also* William Wagner, *Islam, Shariah Law, and The American Constitution* 5, FAMILY RESEARCH COUNCIL, May 2011, <http://www.frc.org/issueanalysis/islam-shariah-law-and-the-american-constitution>.

467. *See supra* note 265.

468. LOU MICHEL & DAN HERBECK, *AMERICAN TERRORIST: TIMOTHY MCVEIGH AND THE OKLAHOMA CITY BOMBING* 231–33 (2001).

469. *Id.* at 180 ("[A]ll you tyrannical mother fuckers will swing in the wind one day, . . . 'for your treasonous actions against the Constitution of the United States.'") (quoting McVeigh)

470. *Id.* at 154.

471. In the 1970s and 1980s, the Posse Comitatus movement declared federal tax laws to be unconstitutional and organized hundreds of local chapters, comprising thousands of armed members, who vowed to resist federal tyranny by

force. The Posse kidnapped and shot federal agents, and several Posse members were killed in shootouts, becoming martyrs for their vision of Constitution. Goldstein, *To Kill and Die for the Constitution*, *supra* note 29, at 185–91. More recently, defense of the Constitution provided the central justification for the April 2014 showdown at Bundy Ranch in Bunkersville, Nevada, when the federal government attempted to seize rancher Cliven Bundy's cattle because he owed more than a million dollars in overdue grazing fees. Bundy resisted, asserting that the federal government lacks authority to possess land within a state and to regulate private grazing. “We’re standing up for the Constitution,” declared Bundy, and a mob of over a thousand armed protesters assembled to stand with him. *Id.* at 180.