

“Is the Constitution an Antiracist Document?”

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Abstract: Anti-racism came into wide prominence with the publication of Ibram X. Kendi's book, *How to be an Anti-Racist* (2019). There, Kendi explains that there is no such thing as being a nonracist, or as being someone who "does not see race" or as being someone who is "color blind," particularly in the American context. Instead, owing to the fact that institutional and structural racism is so deeply ingrained into the fabric of American society, to the extent that one exists in and is a member of American society, and in virtue of having been indoctrinated into that society, one cannot help but have what Michael Banton and others have called "racial consciousness." Within this context, according to Kendi, one is either a racist or an antiracist and the difference turns on whether one is in the habit of regularly taking actions intended to operate in the service of dismantling structural or institutionalized racism. The "nonracist" or neutral stance, in other words, is an endorsement, however unconscious or inadvertent, of the (racist) status quo. Within this framework, not only people, but also social practices, policies, and laws can be either racist or anti-racist but they cannot be neutral. The question to be examined in my talk is whether the U.S. Constitution is racist or antiracist. The answer offered for contemplation and discussion is that the U.S. Constitution can be legitimately interpreted as an anti-racist document, that is, as a document that can successfully operate in the service of dismantling institutional and structural racism. To make the case for this claim, three historical moments in the history of constitutional jurisprudence will be analyzed through a legal hermeneutical lens: the 19th century, the 20th century, and the 21st century. The case will be made that in the 19th century, the constitution operated legitimately as an anti-slavery document, in the 20th century, it operated as an instrument of desegregation, and in the 21st century, it can be understood to support the restructuring of law enforcement in the service of the ends of the Black Lives Matter movement. To support this position, the paper will rely on the ideas of the late Charles Mills, who argued that although western society is rooted in what he called a "racial contract" (or the exclusion from the social contract of persons of color), there are also structures in liberal political and legal theory that can be identified to support a racially equal society. One of those structures, I argue in this paper, is the U.S. Constitution.

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