

"All Power to the People" and its Constitutional Antecedents: The Role of Constitutional Thought in the Black Panther Party's Framing Strategies, 1969-1971

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This article examines the role of constitutional thought in the ideological agenda and framing strategies of the Black Panther Party from 1969 to 1971. Given their rejection and ridicule of the Constitution and their revolutionary dogma, the public and scholarly consensus is that the Black Panther Party (BPP) operated entirely outside the bounds of American constitutional thought, invoking constitutional discourse, if at all, on an ad hoc basis as a pure matter of legal instrumentalism. Indeed, the Black Panthers are largely remembered as an organization that espoused separatist ideas and repudiated the foundational institutions and value systems of the United States.

However, this essay argues that a narrow focus on the Panthers' assailing of the Constitution not only precludes a more multidimensional account of how they simultaneously critiqued and drew from its foundational tenets, but helps preserve a distorted historical image of the BPP as an organization entirely hostile to the values of civic nationalism. The Panthers took issue with the Constitution in large part because its lofty promises of individual rights and equal justice under law nominally applied to all, yet for centuries had only worked in the benefit of White people.

The Panthers gave particular attention, I argue, to the inalienable rights enshrined in the nation's founding documents, structuring both their assessment of Black people's historical subjugation as well as their vision of social transformation around natural rights idioms. Utilizing

the theoretical insights from the framing perspective in social movement studies, I identify three inalienable rights frames that BPP leaders and adherents employed: the right to life, liberty and the pursuit of happiness; the right to create a republican form of government; and the right to revolt against despotic governments or unjust laws.

A key site of the eschewal of these inalienable rights, according to the BPP, was the Sixth amendment, which protects the right to an impartial jury of one's peers. All- or majority-white juries infringed upon their right to life, liberty, and the pursuit of happiness because they had historically often ruled in favor of unjust verdicts for Black defendants that led to imprisonment or death. Secondly, majority-white juries thwarted Black people's right to control their own political "destinies" via the avenue of the jury, a key forum through which "the people" of a republic could check the power of the government and have a say in the adjudicative decisions that would affect their lives. Finally, and relatedly, majority-white juries undermined Black jurors' right to revolt against racist judicial decisions or even laws themselves. Only all-black juries, the BPP asserted, could restore these inalienable rights. By rallying movement constituents around the demand for juries comprised solely of Black peers, or what I identify as the "peers" collective action frame, the Panthers infused the colorblind tenets of the Constitution with their own race-conscious ideological commitments.

Contrary to popular and scholarly accounts, I argue, this call for all-Black juries (and the BPP's political goals more broadly), did not reflect a separatist agenda, but was in fact in step with the civic nationalist ethos of the American constitutional project. The right to fully racially representative juries was not restricted to people from Black communities: all marginalized groups, the BPP believed, were entitled to a jury of their peers. Thus, rather than rejecting the Constitution wholesale, the BPP reformulated its foundational precepts in accordance with their

own worldviews and beliefs about the proper exercise and expression of inalienable rights, re-envisioning the very meaning of equal justice under law.

In this article, I assess the role of the peers collective action frame in BPP rhetoric and protest efforts more broadly, and then use the protests against the New Haven Black Panther trials of 1970-71 as a case study to further elucidate these claims. My article begins with a critical overview of scholarly work on the Black Panthers' relationship with constitutional thought and rights discourse, in which I merge insights from law and society scholarship and the sociology of social movements. While framing theorists largely analyze the strategic function of "rights frames," I argue that legal ideas were not merely instrumental "tools" that the BPP advanced in pursuit of various external goals, but served a "constitutive" function central to the internal ecology of their movement itself.

Next, I detail the qualitative methods I utilized in my analysis. In my examination of Panther rhetoric, I relied primarily on *The Black Panther* weekly newspaper, examining every issue from 1969 through 1971. I used the character recognition tool AbbyyFine Reader and the text mining tool Voyant to assist me in identifying articles that included claims about the Sixth amendment, inalienable rights, and the Constitution. In my analysis of the New Haven trials, I reviewed hundreds of archival documents housed in the Yale University Library Manuscripts & Archives and in the Beinecke Rare Book and Manuscript Library including news coverage, memos and flyers circulated in New Haven, New Haven Panther paraphernalia, local trial newsletters, legal documents from the Panthers' lawyers, speeches, transcriptions of the trials, materials seized by the FBI from the New Haven Panther offices, and more.

In Section I, I examine how the three inalienable rights frames more broadly shaped the Panthers' movement from within, and how they were mobilized at the Panthers' "Revolutionary

People's Constitutional Convention" in 1970. In Section II, I detail how these three frames converged around the issue of the racial composition of juries, and how the "peers frame" simultaneously challenged and harnessed extant Sixth amendment doctrine.

While Sections I and II focus more closely on the ideational features of the inalienable rights and peers frames, Section III assesses how the peers collective action frame functioned "on the ground." I use the protests against the New Haven Black Panther trials of 1970-71 as a case study in order to demonstrate how even though the "peers frame" reflected an evident pragmatic objective of impaneling an all-black jury, constitutional talk was not merely a strategic legal maneuver, but played a key role in inspiring and motivating BPP constituents themselves. In other words, calling attention to their inalienable rights was as much a way of punctuating their own collective experiences vis-à-vis the court system as much as it was a pragmatic effort to produce a legal outcome. Finally, I offer concluding thoughts about future work that might address the BPP's historical engagement with constitutional discourse. Further examinations of the synergistic relationship between Panther ideology and constitutional thought, I suggest, will not only paint a fuller picture of the Party's legacy itself, but can contribute to our understanding of how legal ideas energize and inspire social movement campaigns.