

The Duplicitous Abolitionist: Re-examining Columbia's James Kent

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In April 1793, James Kent, a thirty-year-old lawyer, moved with his wife and young daughter to New York City. Raised in Poughkeepsie and educated at Yale, Kent had departed to New York City with all of his possessions: books, a few pieces of furniture, and a few hundred pounds in cash. The prospects of moving to the city had “offered prizes and held out professional inducements which Poughkeepsie [...] could never hope to equal” – yet the move “began disastrously.”[1] Attracting no law business, and with the expenses of city life proving to be ruinous, the Kents soon stood on the verge of poverty. “I will try a year or two yet,” Kent wrote to his brother, Moss, “and if it will not do here, I must go to the woods somewhere.”[2] To add to his misfortunes, his two-year-old daughter soon became sick. Beset by smallpox brought on by the squalor of the city, she died in May.

It was at this moment – “undoubtedly the ebb tide” of Kent’s life – that the trustees of the renamed Columbia College saved him. [3] Based on a recommendation from Chief Justice John Jay, a friend of Kent’s from his involvement with Federalist circles, James Kent was elected to be the first law professor at Columbia – a position that gave him “relief from penury” with a stipend of £200 a year. [4] With this appointment, Kent’s fortunes changed. With his practice as a lawyer legitimated by this position, he left Columbia only a year later and was propelled into higher positions in the New York legal practice; serving first as Master of Chancery and then as Recorder of New York. In

1798 – only five years after his calamitous start in the city – he was appointed to the New York State Supreme Court, and by 1804 he had become New York’s Supreme Court Chief Justice.

Columbia College undoubtedly changed Kent’s fortunes; and in return, Kent brought enormous lustre to the college. Upon retiring from the Supreme Court and a subsequent chancellorship, Kent returned once again to Columbia and held lectures. It was during this time he published the seminal work of his career; a book containing all of his Columbia lectures that was to become “the great law-book of this country,” *Commentaries on American Law*. Published in 1826, *Commentaries* quickly became “the first of American legal classics,” a treatise on American law that was to have a huge effect on the development of the jurisprudence of the young country.[5] Indeed, “the fact that the *Commentaries* were used by lawyers and judges for the remainder of the nineteenth century meant that Kent's influence was extraordinarily long-lived,”[6] legal historian David Raack writes. As such, Kent is honoured at Columbia to this very day, as the namesake for buildings and professorships alike – Kent Hall, the Chancellor Kent professorship at Columbia Law School and James Kent Scholars (outstanding scholars at Columbia Law) are all tribute to him.

Kent’s rapid ascension of the legal ladder from near poverty, his position as New York’s Chief Justice and his publication of arguably the most influential legal treatise of the eighteenth century all serve as explanations for his posthumous praise. To his biographers, Kent’s success is solely a result of his personal intelligence and virtues. One obituary, published in December 1847, reads that “Chancellor Kent was no less distinguished for the virtues of a good man, which secured to him all the ornaments of age, and its consolations, “as honor, love, obedience and troops of friends,” than for brilliant talents and profound legal attainments.”[7] An inscription of an analysis of *Commentaries* is dedicated to Kent’s integrity and righteousness: “to the Honorable James Kent [...] this volume is inscribed, with sentiments of the most profound respect for [...] the rare combination of virtues which [...] adorn his character in private life.”[8] And a biography by Charles Evan Hughes ends with the following:

Who is more entitled to honor than the incorruptible, learned, industrious, impartial judge? Amid the play of favoritism, the abuses of administrative discretion, the compromises of legislative halls, amid chicanery and dishonesty, disrespect of law and efforts to subvert its enforcement, he stands forth, dependable and steadfast, alike to the rich and poor, weak and strong, the righteous and courageous judge, the fit representative of democracy commanding its best talent for the performance of its highest function. It was this character which ennobled the offices which he held, which enabled him to accomplish his great tasks, and which will cause to be held in fade less honor the name and service of James Kent.[9]

Yet for all of these supposed virtues that allegedly propelled Kent to fame and fortune, there is one issue that recurs throughout Kent's life that casts doubt upon his 'incorruptibility' and his "stand[ing] forth... alike to the rich and poor, weak and strong." Kent's beliefs on slavery and the rights of African-Americans shadow his legacy, and ultimately, irreparably taint it. When it came to the question of slavery, Kent was publicly vocal about his belief in the need for abolition and black rights. However, a closer analysis of Kent's life provides a stark contrast. In fact, not only was Kent a staunch racist, he enslaved at least two people during his life – calling into doubt all of the principles and virtues that he supposedly stood for. This essay will draw out this contrast between Kent's public and private life in order to demonstrate a duplicity inherent throughout his life, and will begin to unearth unsettling beliefs long neglected by his biographers. The purpose of this essay is two-fold; first, it challenges long-held judgements of righteousness and inculpability when it comes to Kent's life, and suggests reasons as to why Kent might have desired to keep his true opinions clandestine. Second, it aims to explore the danger of such opinions – exploring the effects of Kent's covert actions and opinions on the lives he subjugated. Ultimately, this essay argues that we cannot understand Kent's impressive career and his rapid rise to fortune, the friendships that he forged, and the legacy he crafted for himself without understanding his duplicitous nature when it came to the issue of slavery. This is important to underscore because James Kent serves as an example of a trend in

antebellum New York; his artifice may have been overlooked until now because many of his peers embodied similar dualities. It is important to draw out these contrasts in order to begin to understand how so many legal decisions in the nineteenth century, which had irreparable effects on the lives of African-Americans across the United States, were made, and how the privately racist opinions of such men far outlived and out-influenced their public anti-slavery sentiments. James Kent, his life and his work, serves as a perfect example of this.

The essay is organized into four main sections. First, it identifies Kent's supposed opinion on the issue of slavery, his public anti-slavery campaigns, his passionate speeches against the institution, and his apparent desire to equalise free black Americans to the status of whites. Next, it brings to light the key contrast between such public crusades and his private life – Kent's ownership of multiple people. Thereafter, the inquiry aims to explain *how* and *why* Kent would acted in a manner that violated the principles he supposedly stood for – and will unearth Kent's unspoken racism, showing how it may have been advantageous to Kent's career prospects to remain in line with his Federalist colleagues when it came to slavery. Last, the essay examines the danger of Kent's private racism, considering both the women he enslaved and the long-lasting effects his rhetoric had on juridical decisions in the United States. By investigating the impact that Kent had on other peoples' lives, the essay underscores the importance of exhuming such racism, and of holding James Kent and the institutions which propelled his beliefs forwards accountable.

From the very beginning of his time in New York in the early 1790s, James Kent's association with prominent Federalists brought him into contact with anti-slavery and abolitionist movements. Particularly, his friendship with John Jay seems to have introduced him to these circles; in 1785, Jay created and presided over "The New-York Society for Promoting the Manumission of Slaves, and Protecting Such of Them as Have Been, or May be Liberated," or the New York Manumission Society. The

Manumission Society's aims, as its name may suggest, were simple: to "endeavor by lawful ways and means" the manumission of slaves, and "to enable them to share, equally with us ... civil and religious liberty." [10] Kent was proposed for membership of the club in May 1794, and became a regular attendee, frequenting meetings throughout his residency in New York. [11]

With his admission into the New York Manumission Society, Kent purposefully associated himself with a group that "believed that the practices of their cultural network, specifically the collection and dissemination of that information, were better suited" [12] to destroying the institution of slavery than elected officials were, and who believed that slavery was a moral sin. And indeed, throughout his life, Kent publicly denounced slavery, a position that was in keeping with his membership in the Manumission Society and the beliefs of the Society's general body. His 1823-1826 Columbia lectures consistently refer to the practice of slavery, and laws permitting slavery, as a "great evil." [13] He described a 1786 law "by which all slaves, becoming public property by attainder [...] were immediately set free," for example, as a partial alleviation of a "great public evil" – while the Gradual Emancipation law of 1799, which decreed that all children of slaves born after 1799 were to be free, was an "intermediate mitigation of this evil" that "greatly meliorated" all previous laws that existed regarding slavery. [14] Indeed, throughout *Commentaries*, Kent bemoans slavery as a shameful practice, with his condemnation stretching as far back as to the ancient republics; while the presence of slavery in the "free states of antiquity [...] cannot but diminish very considerably our sympathy with their spirit," the present day's "domestic annals afford sufficient matter of alternate humiliation and pride, for painful and for exulting contemplation." [15] In this same lecture, he mused too that while past "evils of domestic slavery are inevitable" and could not be changed, the responsibility of slavery "does not rest upon the present generation, to whom the institution descended by inheritance, provided they have endeavoured by all reasonable means to arrest or mitigate the evil." [16]

Not only was Kent vocal on his opposition to slavery, he also advocated for the extension of certain civil rights to black Americans through his role as a well-respected

jurist. Perhaps the clearest example of this is his position at the 1821 New York Constitutional Convention. While the convention's attendees debated the rights of free African Americans, Kent's impassioned speeches suggested a genuine desire to grant black New Yorkers civil rights and see black men enfranchised. For example, while supporting a motion that would strike out the word 'white' from voter qualifications within the constitution, he argued that:

We did not come to this Convention to disfranchise any portion of the community, or to take away their rights. Suppose a negro owning a freehold and ratified to vote in Vermont, removes to this state. Can we constitutionally exclude him from enjoying that privilege? The constitution of the United States provides that "the citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states;" and it deserved consideration whether such exclusion would not be opposed to the constitution of the United States.[17]

Thus, when it came to the enfranchisement of black men, he argued that it was "inexpedient to erect a barrier that should exclude them forever from the enjoyment of this important right." [18] Using a similar argument, he also voted against a proposed article of the new state constitution that would permanently disenfranchise black men by requiring far stricter property laws, voting instead for a provision which "might in some degree alleviate the wrongs we had done them [African-Americans]." [19] While his vote to prevent the property qualification was in the minority and thus was unsuccessful, the voter qualification of 'white' was indeed stricken out of the New York State's constitution with the help of his impassioned speeches. [20]

Through his lectures, memberships and even legislative actions and decisions, Kent thus seems an austere and resolute character who lived by his principles – the principle of anti-slavery and abolition being no exception. Indeed, this evidence suggests that Kent was an enlightened abolitionist figure of the antebellum period, who truly did believe that slavery was a "great evil," and who worked towards ending not only the institution, but towards repairing its post-emancipation legacy in New York. However, an

examination of his actions in private tells quite a different story; one that brings into doubt all of his public actions and statements made, and that underscores his duplicity when it came to the question of slavery.

In 1797, while serving as New York's Master of Chancery, James Kent wrote a letter to his brother, Moss, speaking of his newly found success and his life in New York. He elaborated mainly about what he spent his riches on, and responded to his brother's request for a loan:

You may ask what I do with all my money, as I make a great deal. I can tell you. I paid the first of last May, £349, being the third instalment on my house here. I paid in May £65 for a wench I purchased. I have to pay, the third of July next, £833, being the remainder of money I owe on the Phelps contract. That is all I now owe, and by this means I shall be able to meet the July payment...Next May I shall not owe anybody on earth. In the fall, therefore, if you want, call on me.[21]

Without a close examination of this list, it may seem trivial; a list of debts and bills that he is accounting for. One might almost miss his throwaway remark that "I paid in May £65 for a wench I purchased" – an admission that Kent engaged in the slave trade, buying a black woman. It is indubitable that this purchase was that of a slave, and not a different transaction; a "wench" in antebellum America was defined as "a black or colored female servant; a negress." [22] (This definition is given by an 1828 dictionary published by Noah Webster, incidentally a close friend of Kent's.) Another dictionary, Bartlett's 1848 *Dictionary of Americanisms*, specifies that "in the United States, this word is *only* applied to black females" [23] (italics added).

In fact, census records prove that Kent owned at least two slaves during his life. While in 1790, Kent's household in Poughkeepsie lists no enslaved people, the 1800 census records one enslaved person in the Kents' domicile – presumably the woman mentioned in Kent's letter. [24] By 1810, when Kent was serving on the New York

Supreme Court in Albany, he had purchased another slave; not one but two enslaved workers are listed within his household.[25] In his public statements, there is no record of the woman mentioned in the letter, or the other slave – whose sex is unknown. Neither is there a record of either slave’s manumission; although the 1820 census shows that by 1820, there was only one free coloured person, aged 14-25, living in the Kents’ house, suggesting that Kent manumitted both of his slaves over the period of 1810-1820, and that the second slave Kent bought was also a young woman (unless the “wench” Kent bought in May 1797 was two years old). [26] Yet the presence of both of these workers is purposefully omitted to those who do not know him; to an admirer of his work named Thomas Washington, he wrote of his the period of 1790-1800 that “I do not believe any human being ever lived with more pure and perfect domestic repose & simplicity & happiness than I did for those nine years,” neglecting to mention his domestic workers in his “repose.” [27] Kent’s failure to mention either of these women again in any of his letters other than to close family speaks volumes in its silence. We are left to imagine who “waited upon that great lady, Mrs. Jay” when she “came to drink tea with Mrs. Kent,” or indeed who cooked for the Chancellor when his wife was away (an 1806 letter from Kent to his wife reads as follows: “my dinner will soon be up. It is to be very frugal, a small pudding and a steak, that’s all.” [28])

Through his casual mentioning of this purchase and his neglect to mention either of the two enslaved people anywhere thereafter, it seems as though Kent did not consider his enslavements either an injustice or a morally condemnable act. Such a claim is bolstered by the fact that Kent had grown up in a household that had also contained slaves, but whose presence was similarly disregarded. Again, we only know of an enslaved person’s existence through a brief comment made by Kent in a private letter, once again addressed to his brother. The letter revolves primarily around their father’s death, and we only learn about Jack, an enslaved person within the household, in one sentence primarily about their father’s well-being – Kent’s father was “waited upon by Jack, his faithful negro” until his death. [29] The 1790 census records corroborate the existence of not one, but two slaves in his father’s household; yet once more, other records of this person’s existence do not exist. [30]

Why, then, if Kent was a member of the Manumission Society and supported the Gradual Abolition Bill of 1799, did he enslave women for at least ten years thereafter? To his admirers, Kent's omissions of his enslaved workers are not erasures of lives and an example of hypocrisy; instead, they are simply symptomatic of the time within which he lived. Indeed, to Kent's biographers, his letter admitting the ownership of a woman represents simply a little considered issue, with his slave-keeping described as follows:

A letter to his brother [...] shows not only that he had become, in a modest way, a capitalist, but touches upon a phase of social life then but little considered, but which, later in the history of our country, like an impenetrable cloud, obscured the brightness of our political sun.”[31]

Yet from what we have seen in Kent's life and work, it is clear that the question of slavery was not “but little considered” during his life. In fact, the question certainly was considered, and, at least in public, he was extremely vocal about his opposition to the institution. The question thus becomes two-fold: *how* could Kent be so vehemently anti-slavery in public, while privately enslaving a woman, and *why* would Kent voice such strong moralistic condemnations of slavery if he himself owned multiple slaves? The next part of this essay will attempt to answer these questions, unearthing his true opinions on the matter of race and slavery, and will find that ultimately, Kent's public stances did not represent his true viewpoint on the matter, but may instead be indicative of his desire to support causes dear to his patrons.

In Lecture thirty-two of Kent's Columbia law class, memorialised in *Commentaries on American Law*, Kent ends his lecture on the “great evil” of slavery with a final sentence:

But though slavery be practically abolished in New York, the amended constitution of 1821, art 2, placed people of color, who were the former victims of the slave laws, under permanent disabilities as electors, by requiring them a special qualification as to property, peculiar to their case, to entitle them to vote.[32]

In this sentence, Kent brings up the property qualification that he voted against at the 1821 Constitutional Convention, and then moves on to speak about hired servants – leaving the slavery question behind, and once again making his supposed stance on the issue clear by demarcating slaves as “victims”. Yet in his published commentaries, an addendum is made: a lengthy footnote of over two thousand words, which catalogues additional provisions that other states had made with respect to both slavery and questions of black citizenship. This footnote was never spoken aloud – it was only added as a postscript to the main part of his argument – yet it is in this footnote that we perhaps gain the most insight into Kent’s opinions regarding race.[33] When talking about the rights of African-Americans, Kent is deliberately ambiguous about his own opinions; while he keeps within the bounds of his self-professed public posture, he at the same time gives full play to racist premises. The start to one paragraph, for example, reads “The African race, even when free, are essentially a degraded caste, of inferior rank and condition in society.”[34] Such an emphatic statement is shocking when we consider his lectures that condemn slavery and race-based discrimination; but it is quickly followed by an examination of cases in South Carolina which provide ‘evidence’ of this “inferior rank.” One of the cases he mentions – *The State v. Harden* – ruled that free black men were a “degraded caste of society,” were “in no respect on a perfect equality with the white man” and “should consider themselves as inferiors to whites in all relations in society.”[35] Kent’s outright racism in his statement that “the African race [...] are essentially a degraded caste, of inferior rank and condition” is thus transformed; it can either be seen as a profession of explicit racism, or as a summary of rulings such as *The State v. Harden*.

This careful rhetoric finesse of his own position is used throughout his footnote; the reader is often left to decide whether Kent is espousing racist discourse himself, or whether he is simply reiterating the views of others. When Kent goes on to speak about the rights of black freedmen for example, he writes that “free negroes are not in any of the states entitled to all the privileges and immunities of citizens,” and that “free blacks are not citizens within the provision of the constitution of the United States.”[36] Once

more, he frames the sentence with legal decisions that provide ‘evidence’ of these statements, again leaving it inconclusive whether he is upholding his own views, or simply paraphrasing such decisions.[37] We can thus observe how Kent carefully structured his rhetoric and potentially inflammatory statements to be deliberately ambiguous. By listing cases after his own assertions that use similar language, he manages not to dissociate himself with his public posture; yet at the same time, his use of declarative sentences and the present perfect tense appears to condone these racist legal decisions. In this footnote, then, Kent’s position on race is ambiguous at best and categorically racist at worst – and, rather than distancing himself from racist legal premises (as he professes that his associates such as William Jay have[38]) he aligns himself with them.

Even the suggestion of such racism seems shocking when contrasted to his lecture; in Kent’s citation of judicial authorities, the “victims” of slavery become “a degraded caste” who should not be offered legal rights or protections. However, once again, an examination of Kent’s private life reveals that Kent held starkly different views to his public professions –making the statements in this footnote perhaps less surprising. Letters from Kent to his closest circle reveal his true opinions on race and slavery, espousing racist and even anti-abolitionist ideals. In a letter to his brother in 1833 – long after the abolition of slavery in New York, and after the publication of *Commentaries* – he “criticized the activities of the abolitionists” when they attempted to promote the abolition of slavery in Southern states. [39] And in an 1842 letter to William E. Channing – a close friend who was the foremost Unitarian preacher in the United States, and who has been labelled as a “romantic racist” – he revealed that he believed that slavery in the South “ought to be let alone,” and that “I do not believe that [...] abolition would be expedient or wise.” [40] In fact, throughout his life Kent “refused to be carried away by the tide of indignation rising against slavery in his own country,” primarily because “the slaves were of a distinct race, and Kent could not bring himself to believe that they [African Americans] deserved a much better status” as freed people. [41] Such opinions, held privately and divulged only to his closest confidants, provide a completely different persona to his public-facing one and a stark contrast to his public actions. How can we explain his vehemence against the ‘evils’ of slavery in his lectures, when we consider

his promulgation of racist doctrines in his addenda, and anti-abolitionist letters to his brother and friends? How can we explain his joining of the Manumission Society in 1794 and his purchasing of a woman – the very opposite of the Society’s stated goal – in 1796?

When such contradictions are taken into consideration, it is more than reasonable to claim that Kent may have publicly been anti-slavery only because such a stance was advantageous for his career. After all, if we look at Kent’s life, his connections to high-ranking Federalists – some of whom genuinely opposed slavery and called for its abolition – helped him enormously, and indeed can be said to be the reasons for his prosperity. It may have been a pragmatic move for him, therefore, to claim to be anti-slavery, while in reality he held very different beliefs.

From the age of 23, Kent, in his own words, had “commenced [...] to be a zealous Federalist.”[42] It was this political association that undoubtedly kickstarted his career in New York City; when “the Kents were on the verge of poverty,” it was Kent’s Federalism that ultimately landed him the position of Professor of Law at King’s college. [43] Kent himself “attributed the appointment to his Federalist connections” – after all, “if any college could be confident of patronage and favors, that college was King’s, whose alumni made the bead-roll of the city’s distinction.” [44] With this appointment began his career in New York – and his rise out of poverty.

For the first time understanding the value of that his Federalist connections could bring him, Kent began to “actively defend” his patrons – in particular, John Jay – thereafter in newspapers and prints. [45] In 1796, “Jay would repay Kent’s support” as Governor of New York, rewarding Kent with the appointment to the office of the Master of Chancery; and yet again, in 1798, it was John Jay who appointed Kent to a vacancy on the New York Supreme Court. [46] Indeed, even when Kent was forced “against his wishes” to leave his position of Chancellor of New York on his sixtieth birthday, and found himself an “involuntary retiree,” he was saved by the Columbia trustees, who reoffered him his position as Professor of Law. [47] It seems that Kent’s meteoric rise from struggling, unemployed lawyer to Chief Justice of the New York State’s Supreme Court was not based upon Kent’s virtues and talents as a jurist, as his biographies have so often

claimed. Rather, it was Kent's Federalist lot that propelled his career forward, and indeed, that gave him the platform with which to release *Commentaries*. Thus, it would not be too unsubstantiated a claim to suggest that Kent's successes and riches were in large part due to these connections.

With such a network having given him so much, it becomes clearer, then, why it may have been advantageous for Kent to adopt the stances of many of the Federalists, but notably John Jay, without believing them himself. In this way, his admission into Jay's Manumission Society and his vocal anti-slavery stance may have aligned him further with the powerful Federalists, while vocalising his true opinion may have put him at odds with them. With this in mind, the contradictions Kent embodies may make more sense.

Indeed, it would not be too far-fetched a claim even to suggest that perhaps the speeches that Kent gave at the 1821 Constitutional Convention reveal less about Kent's beliefs than his attempts to appease and find good favour with his patrons. After all, the motion to strike out the word 'white' from voting qualifications – on which Kent spoke so passionately – had been put forward by William Jay, John Jay's son. Just before Kent gave his speech, Jay had said the following:

It is true that some philosophers have held that the intellect of a black man, is naturally inferior to that of a white one; but this idea has been so completely refuted, and is now so universally exploded, that I did not expect to have heard of it in an assembly so enlightened as this [...] there are gentlemen on this floor who, to their immortal honour, have defended the cause of this oppressed people [...] and I trust they will not now desert them.[48]

It may be, then, that such a speech reminded Kent that certain members of his patronage circle "trust[ed]" that he would "defend the cause of this oppressed people," explaining, perhaps, why his speech stood in such opposition to the private views we know he held. In the official transcript of the convention, Kent's speech is prefaced with "Mr. Kent supported the motion of Mr. Jay." [49]

Such an argument is supported by the fact that only days before his impassioned speech at the Convention, Kent had apparently attempted to suppress African-American rights in a separate discussion over enfranchisement. According to the official transcript of the convention, an incredulous Colonel Young questioned Kent on his sudden reversal of beliefs; asking why, “although a few days ago he voted for the *total* exclusion of the blacks” in the right to vote, he was “now opposed to” such an exclusion. [50] (Kent gave an unsatisfactory response – he avoided the question completely and instead emphasised that in Europe “the distinction of colour was unknown,” in contrast to America.[51]) Clearly, there was a contradiction to what Kent believed and what he said in public – a contradiction that was even picked up upon by his peers at the 1821 Constitutional Convention.

Inconsistencies such as these suggest that Kent supported his powerful peers’ opinions on the issue of slavery when he needed to, rather than vocalising his true beliefs. Thus, the sharp contrast between his public persona and his privately held beliefs might be best explained by his attempts to appease a patronage network. However, without direct evidence such a claim must remain credible speculation. What is indubitable, though, is that the closeted racism that Kent embodied cannot be understated, because it irreparably affected the lives of enslaved people; both directly through the people who immediately served him and his family, and indirectly through his legacy. The next part of this essay will attempt to exemplify the way in which Kent’s life and writings affected the lives of others, and will attempt to underscore the detriments that his private racism brought to others far beyond his life.

Let us first return to one simple fact – the fact that James Kent enslaved not one but two people in his home and neglected to acknowledge them publicly. One woman’s life has been reduced to one sentence: “I paid in May £65 for a wench I purchased.”[52] Her value was based on a monetary sum, and her existence degraded with one condemning word – “wench,” a racialised, pejorative noun used as a “tool for dehumanizing black women, insisting on their sexual availability to white men, and facilitating their exploitation.”[53] The other woman, of course, has no story; we cannot even certainly

say that the person was a woman. Her life has been forgotten, with no means of remembrance but for a statistic in a census. She had a fate similar to so many other enslaved women: “an untimely story told by a failed witness,” a life that “amounts to ‘little more than a register of her encounter with power’” that provides “a meagre sketch of her existence.”[54] These lives have been preserved, but at the same time erased; we cannot but guess anything more about these their fate, “illuminat[ing] the difficulty of recovering enslaved lives from the annihilating force of such description.”[55] The same is true, of course, of Kent’s father’s slaves. We know only Jack’s name and his “faithful” nature; the man’s life itself has been lost, as has been the life of the other enslaved person in his father’s household. Did these people die in enslavement? How long did they work for the Kents? Were they all manumitted simultaneously, and did some choose to stay with the Kents afterwards? Are there more domestic workers, who were employed in between census years? With so little said about these two people, we cannot accurately reconstruct their lives; but we do know that they existed, and that thousands of other women and men alike shared their circumstances. In the case of the woman enslaved in New York, we also know that the responsibility of her plight, and the degradation of her life to a household “wench,” falls upon James Kent.

Kent’s ownership of people clearly had the most direct and forceful adverse impact upon human lives, and undermined all of his statements about the ‘evils’ of slavery. Yet his private racism likely also had an impact on lives all across the United States, even beyond his death. After all, as the “most influential American law book of the antebellum period,” and “the staple in the educational diet of American lawyers well into the late Nineteenth Century,” *Commentaries on American Law* and its footnotes outlived Kent, and went on to influence future juridical decisions. [56] Most significantly, Kent’s footnotes had an effect on one of the most damaging legal decisions for African-Americans of the nineteenth century; the case of *Dred Scott v. Sanford*.

In 1857, the infamous Supreme Court verdict of *Dred Scott v. Sanford* given by Chief Justice Taney stipulated two central propositions: that no black person could be a citizen of the United States, and that slavery could not be constitutionally prohibited in American territories. While it has since been universally condemned, historian Mark

Graber argues “Taney’s constitutional claims were well within the mainstream of antebellum constitutional thought.”[57] After all, in his opinion for the majority of the court Taney made it very clear that his decision was influenced by other legal treatises; and in particular, it seems that “the opinion that free persons of color were not state or American citizens [...] was endorsed by the leading northern treatise on jurisprudence, James Kent’s *Commentaries on American Law*.”[58] Taney’s commentary over the decision reads as follows:

In addition to those already referred to, it is sufficient to say, that Chancellor Kent, whose accuracy and research no one will question, states in the sixth edition of his *Commentaries* (published in 1848, 2 vols., 258, note b,) that in no part of the country except Maine, did the African race, in point of fact, participate equally with the whites in the exercise of civil and political rights.[59]

Through this statement, James Kent’s unspoken footnote, with its ambiguity and debatably racist alignments, became a core part of his legacy; it became a justification for the decision that denied black Americans the rights to citizenship. Taney’s quotation of Kent’s footnote “with approval,” and his demarcation of Kent as a jurist “whose accuracy and research no one will question,” shows just how important Kent’s footnotes in *Commentaries* really were; his words were taken primarily as endorsements of doctrines that prohibited black citizenship, and his status as leading jurist provided legitimacy for Taney’s decision. [60] Thus the danger of Kent’s ambiguity in his footnotes becomes clear. By implicitly aligning himself with previous judgements made, he justified such judgements; thereby conferring legitimacy upon similar decisions for the future. Given that Taney quotes the very same footnote in his commentary, it is very probable that he was influenced also by the later section in this footnote that reads “free blacks are not citizens within the provision of the constitution of the United States.”[61] Thus, while such statements arguably are not Kent’s opinions themselves, Taney’s quotation shows just how important – and dangerous – Kent’s promulgation of racist legal decisions was even far beyond his death. As such, it is clear that Kent and his works shaped juridical decisions about black citizenship through his addendums; and it

is likely that his work directly impacted what “American legal and constitutional scholars consider [...] the worst ever rendered by the Supreme Court.”[62]

Thus we see that while James Kent may have publicly criticised slavery during his lifetime, and even voted for causes such as the enfranchisement of free African-Americans, his propagation of racist opinions and disregard for the life of the people he enslaved left a far greater legacy – one that ultimately may have affected millions of black lives across the country. We can see how this contrast between his public and private life is dangerous, then; ultimately, men such as Kent were in the position to make meaningful changes for the lives of African-Americans, but their racism meant that they often adversely affected these lives, both directly and indirectly. Such a danger is only exacerbated by the fact that the hypocrisy that James Kent’s life embodies is not exceptional to Kent alone; when it came to the question of slavery, the public and private lives of many of the men who made up the powerful circles that Kent was part of seem to be paradoxical. Kent was not the only owner of slaves in the Manumission Society; there were many slave-holding members (in fact, the Society rejected Alexander Hamilton’s suggested resolution that “anyone who wanted to be a member had to free their own slaves”[63]). Nor was he the only one to declare slavery a “great evil,” while suggesting that African-Americans were a “degraded caste of society” – many of his ‘enlightened’ compatriots held similarly contradicting beliefs. Rather, Kent is an example of a disturbing trend of behind-closed-doors racism within the groups of men who claimed to desire change when it came to the question of slavery. As these characters openly moved the abolition of slavery forward, and voted for measures in this effect, the racism that so many of them embodied indubitably and incorrigibly affected the lives of enslaved people – whether through direct enslavement, or through racist rhetoric and writings that were to be handed to posterity.

When we consider the contrasts between Kent’s public and private life, two key points are clear. First, whether or not his vocal anti-slavery was a result of the benefits that such a stance might have brought him in his network and career, James Kent’s actions had long-lasting effects on people’s lives, both directly and indirectly. Second, the impacts of such actions underscore the hypocrisy and failings of the Northern

abolitionist movement – they are not exceptional to Kent alone, but extend across his circle of influential lawmakers and jurists. As such, we cannot understand the biographies of those that are deemed ‘honourable,’ ‘righteous’ and ‘courageous’ when it comes to their careers and lives without understanding that such men also irreversibly damaged the lives of others – which casts doubt on such supposed moralities and virtuosities.

The troubling private life of James Kent – just like many others who held duplicitous beliefs while campaigning for the abolition of slavery – must not be forgotten when we consider his biography. Rather, we must re-evaluate the value of Kent’s life and work on American legal jurisprudence; for all that he may have contributed to American legal discussion, he also impacted the lives of African-Americans in the United States incredibly adversely. Such a re-evaluation is particularly necessary for Columbia, given that the college not only propelled his career forwards, but gave him a platform for his beliefs through lectures, and gained wealth and riches from his works through the publication of *Commentaries*. This exploration of Kent’s life makes it clear exactly why his legacy of virtuosity, honour and learnedness, still so evident at Columbia, is concerning. Columbia needs to readdress its reverence and veneration for its first law professor, James Kent, and for characters similar to him; only then can the University begin to atone for and redress errors of the past, the legacies of which are alive and well at the institution today.

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footnote (b)

(b) This disability was continued in the revised constitution of New York of 1846, though the convention submitted to the test of popular suffrage the question, whether colored male citizens should have the right to vote without any such restriction, and a large majority of the electors of the state, in November, 1846, answered the question in the negative. In most of the United States there is a distinction, in respect to political privileges, between free white persons and free colored persons of African blood; and in no part of the country, except in Maine, do the latter, in point of fact, participate equally with the whites, in the exercise of civil and political rights. The

manumission of slaves is guarded in some, at least, of the slaveholding states, from abuse and public mischief, by legislative provisions. Thus, for instance, in Tennessee, a deed or will emancipating a slave is not void, but it communicates to the slave only an imperfect right, until the state has assented to the act. The statute of 1777, authorizing the county courts to give the assent of the government to the manumission of slaves, restricted the assent to cases where the slave had rendered meritorious services. The Act of 1801 repealed that part of the Act of 1777, requiring the slave to have rendered meritorious services as a condition of the emancipation, and the county courts were to exercise their sound discretion in giving or withholding the assent. The Act of 1829 vested the same discretion in the chancellors of the state. The Act of 1831 required that slaves, upon being emancipated, be removed beyond the limits of the state ; and, in accordance with the policy of the Act, the courts are bound to make it a condition of the assent to the manumission, that security be given that the emancipated slave be forthwith removed beyond the limits of the United States, and no free negro is permitted to enter that state or return to it. See Fisher 1; Dabbs, 6 Yerger's Tenn. Rep. 119, where Ch. J. Catron gives a strong picture of the degradation of free negroes living among whites, without motive and without hope. In Virginia and Kentucky, it is understood that slaves can be set free by will, without the concurrence of the state. The

amended constitution of Tennessee, of 1834, prohibits the legislature from passing laws for the emancipation of slaves, without the consent of the owners. So, by the constitution of the territory of Arkansas, as made by a convention of delegates in 1835, there is the like prohibition, and a prohibition, also, of laws preventing emigrants from bringing their lawful slaves with them from other states, for their own use, and not as merchandise. In Alabama, by statute, (Aik. Dig. 452,) all negroes, mulattoes, Indians, and all persons of mixed blood, descended from negro or Indian ancestors, to the third generation inclusive, though one ancestor of each generation may have been a white person, whether bond or free, are declared incapable in law to be witnesses in any case whatever, except for and against each other. In Ohio, persons having more than one half white blood are entitled to the privileges of whites. Wright's Ohio Rep. 578. The rule in Virginia and Kentucky is, that a mulatto, or one having one fourth of African blood, is presumptive evidence of being a slave, and that an apparently white person or Indian is *prinui facie* free, and is actually so, if having less than a fourth of African blood. 3 Dana's Ken. Rep. 385. The best test of the distinction between black and white persons is, says this case, autopsy, or the evidence of one's own senses, and personal inspection by a jury is therefore the best and highest evidence as to color. By the amended constitution of North Carolina, in 1835, no free negro, mulatto, or free person of mixed blood, descended from negro ancestors to the fourth generation inclusive, though one ancestor of each generation may have been a white person, shall vote for members of the legislature. The right of voting is confined to white freemen by the constitutions of Delaware, Virginia, Kentucky, Louisiana, Mississippi, Illinois, Indiana, Ohio, Missouri, South Carolina, and Georgia; and by law in Connecticut, none but free white persons can be naturalized. See *supra*, p. 72. In South Carolina, a free person of color is not a competent witness in the courts of record, although both the parties to the suit are of the same class with himself. *Groning v. Devana*, 2 Bailey's Rep. 192.

The African race, even when free, are essentially a degraded caste, of inferior rank and condition in society. See the judicial sense of their inferior condition, as declared in the case of *The State v. Harden*, and *The State 1: Hill*, 2 Spear's S. C. Eq. Rep. 150,152. Marriages between them and whites are forbidden in some of the states where slavery does not exist, and' they are prohibited in all the slaveholding states and when not

absolutely contrary to law, they are revolting, and regarded as an offence against public decorum. The statute of North Carolina, prohibiting marriages between whites and people of color, includes in the latter class all who are descended from negro ancestors, to the fourth generation inclusive, though one ancestor of each generation may have been a white person. *State v. Watters*, 3 Iredell, 455. By the Revised Statutes of Illinois, published in 1829, marriages between whites and negroes, or mulattoes, are declared void, and the persons so married are liable to be whipped, fined, and imprisoned. By an old statute of Massachusetts, in 1705, such marriages were declared void, and they were so under the statute of 1786. And the prohibition was continued under the Mass. R. S. of 1836, which declared that no white person shall intermarry with a negro, Indian, or mulatto. This prohibition,

however, has since been repealed. A similar statute provision exists in Virginia and North Carolina. Marriages of whites and blacks were forbidden in Virginia, from the first introduction of blacks, under ignominious penalties. Hening's Statutes, vol. i. p. 146. Such connections, in France and Germany, constitute the degraded state of concubinage, which was known in the civil law as *Halo consueludo remimtrimom'um*, but they are not legal marriages, because the parties want that equality of status or condition which is essential to the contract. Ohio and Indiana

are not slaveholding states ; and yet, by statute, a negro, mulatto, or Indian, is not a competent witness in civil cases, except where negroes, mulattoes, or Indians alone are parties, not in pleas of the state, except against negroes, mulattoes, or Indians. In the Act of Ohio in 1829, for the support and better regulation of common schools, the instruction in them is declared to be for the "white youth of every class and grade, without distinction." And in the Act of Ohio of 1807, to regulate black and mulatto persons, it is declared that no black or mulatto person shall be permitted to settle or reside in the state, unless he first produce a fair certificate from some court within the United States, under the seal of the court, of his actual freedom. Nor is a negro or mulatto person permitted to emigrate into, and settle within that state, unless within twenty days thereafter he enter into a bond, with two or more freeholders, in \$500, conditioned for his good behavior, and to pay for his support, if found unable to support

himself. This Act is still in force. See R. S. of Ohio, 1831, and of Indiana, 1838. These provisions have pretty effectually protected the people of Ohio and Indiana from the presence of any colored population. A statute provision of the same import was passed in Michigan, April 13, 1827 ; and in Illinois a like policy appears in several statutes between 1819 and 1833, prescribing the means requisite for a black or mulatto person to acquire a lawful residence. So, also, in Indiana, is similar policy prevails by Act of 1831 ; but that state liberally secures to the master the right to pass through the state to any other state with his negro, or mulatto, or other servants.¹ In Connecticut, by statute, in 1833, any colored person, not an inhabitant of the state, who shall come to reside there for the purpose of being instructed, may be removed, under the Act for the admission and settlement of inhabitants; and it was made penal to set up or establish any school or literary institution in that state,

for the instruction of colored persons not inhabitants of the state, or to instruct or teach in any such school or institution, or to board or harbor, for that purpose, any such persons, without the previous consent, in writing, of the civil authority of the town in which such school or institution might be. In an information under that provision against Prudence Crandall, filed by the public prosecutor, it was held, by Ch. J. Daggett, at the trial in 1833, that free blacks were not citizens within the meaning of the term, as used in the constitution of the United States. And in "An inquiry into the political grade of the free colored population under the constitution of the United States," and of which John F. Denney, Esq., of Pennsylvania, is the author, this same doctrine is elaborately sustained. The decision in Connecticut was brought up for review before the Supreme Court of Errors, and the great point fully and ably discussed; but the cause was decided on other ground, and the question touching the citizenship of free persons of color was left unsettled. Since that decision, William Jay, Esq., in "An inquiry into the character and tendency of the American Colonization and American Anti-Slavery Societies," (pp. 3845,) has ably enforced the other side of the question, that free colored people, or black persons, born within the United States, are citizens, though under many disabilities - Perhaps, after all, the question depends more on a verbal than on an essential distinction. It is certain that the constitution and statute law of New York (Const. art. 2, N. Y. Revised Statutes, vol. i.p. 126, sec. 2) speaks of men of color as being citizens, and capable of being freeholders, and entitled to vote. And if, at common law, all human beings born within the allegiance of the king, and under the king's obedience, were natural-born subjects, and not aliens, I do not perceive why this doctrine does not apply to the United States, in all cases in which there is no express constitutional or statute declaration to the contrary. Blacks, whether born free or in bondage, if born under the jurisdiction and allegiance of the United States, are natives, and not aliens. They are what the common law terms natural-born subjects. Subjects and citizens are, in a degree, convertible terms as applied to natives; and though the term citizen seems to be appropriate to republican freemen, yet we are equally, with the inhabitants of all other countries, subjects, for we are equally bound by allegiance and subjection to the government and law of the land. The privilege of voting, and the legal capacity for office, are not essential to the character of a citizen, for women are citizens

without either; and free people of color may enjoy the one, and may acquire, and hold, and devise, and transmit, by hereditary descent, real and personal estates. The better opinion, I should think, was, that negroes or other slaves, born within and under the allegiance of the United States, are natural-born subjects, but not citizens. Citizens, under our constitution and laws, mean free inhabitants, born within the United States, or naturalized under the law of Congress. If a slave, born in the United States, be manumitted, or otherwise lawfully discharged from bondage, or if a black man be born within the United States, and born free, he becomes thenceforward a citizen, but under such disabilities as the laws of the states respectively may deem it expedient to prescribe to free persons of color. It was adjudged by the Supreme Court of Pennsylvania, in 1837, that a negro or mulatto was not entitled to exercise the right of suffrage. *Hobbs v. Fogg*, 6 Watts, 553. And it has been adjudged in Tennessee, in 1838, in the case of *The State v. Claiborne*, Meigs, 331, that free blacks are not citizens within the provision of the constitution of the United States, art. 4, sec. 2; for free negroes are not in any of the states entitled to all the privileges and immunities of citizens, and a state may constitutionally prohibit free persons of color from removing into the state to reside therein. See, also, the official opinion of the attorney-general of the United States, that free persons of color in Virginia were not citizens within the intent and meaning of the Act of Congress regulating the foreign and coasting trade.

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[3] Langbein 558

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[14] Kent, "Commentaries," 294

[15] Kent, "Commentaries," 285, 292

[16] Kent, "Commentaries," 292

[17] Nathaniel Hazeltine Carter and William Leete Stone. *Reports of the Proceedings and Debates of the Convention of 1821 Assembled for the Purpose of Amending the Constitution of the State of New York: Containing All the Official Documents Relating to the Subject, and Other Valuable Matter*. E. and E. Hosford, 1821: 191. Hereon referred to as Constitutional Convention.

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