

On Dred Scott v. Sanford

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It saddens me that slavery existed in this country. Nobody, black or otherwise, should be a slave in the United States, let alone in the world.

At the time of the decision of the Supreme Court of the United States in *Dred Scott v. Sanford*, in the year of 1856, there were black citizens as well as black slaves.

[Footnote 1] Black citizens were descendants of blacks who were citizens at the time of the adoption of the Constitution. Black slaves were descendants of blacks who were slaves at the time of the adoption of the Constitution.

Much confusion exists on this. However, this can be cleared up by the following. "The Act for the gradual abolition of slavery," passed the first day of March, 1780, 1 Smith's Laws of Pennsylvania 492, states at section four:

It is "provided that every negro or mulatto child, born within this state after the passing of this act (*who would in case this act had not been made, have been a servant for years, or life, or a slave* **[Footnote 2]**) ***shall be by virtue of this act the servant of such person. . . .***"

At section thirteen, it reads:

"[T]hat no covenant of personal servitude or apprenticeship whatsoever shall be valid or binding on a negro or mulatto for a longer time than seven years, unless such servant or apprentice were at the commencement of such servitude or apprenticeship, under the age of twenty-one years, in which case such negro or mulatto may be holden as a servant or apprentice, respectively, according to the covenant, as the case shall be, until he shall attain the age of twenty-eight years, but no longer." **[Footnote 3]**

This act of Pennsylvania changed the status of negros and mulattos who were slaves to that of servants. In addition, as servants, they could be a servant no longer than seven years, since the passage of the act; that being March 1, 1780. The only exception was if one was under the age of twenty-one, at the passage of the act. Then, as a servant, a negro or mulatto could be such until he or she reached the age of twenty-eight.

The Constitution of the United States of America was not completed until September 17, 1787. Therefore, on March 1, 1787, the Articles of Confederation applied. Article IV of the Articles of Confederation provided:

“[T]he **FREE INHABITANTS** of each of these states, shall be entitled to all privileges and immunities of **FREE CITIZENS** in the several States.” **[Footnote 4]**

<http://www.barefootsworld.net/aoc1777.html>

Thus, a negro or mulatto, on March 1, 1787, became a free person, and as such, under this provision of the Articles of Confederation, was entitled to all the privileges and immunities of free citizens in the several States, if a resident in Pennsylvania.

The Constitution of the United States of America was ratified on June 21, 1788, with the ninth state of New Hampshire approving it. **[Footnote 5]**

Up until June 20, 1788, then, a negro or mulatto who reached the age of twenty-eight, became a free person, and entitled to privileges and immunities of free citizens in the several States, if a resident in Pennsylvania, under Article IV of the Articles of Confederation.

On June 21, 1788, and thereafter, however, a negro or mulatto who reached the age of twenty-eight, became a free person, but being not a citizen, though a resident of Pennsylvania, was not entitled to all the privileges and immunities of citizens in the several States. Article IV, Section 2, Clause 1 of the Constitution of the United States of America, provides:

“[T]he **CITIZENS** of each State shall be entitled to all the privileges and immunities of citizens in the several States.”

http://www.archives.gov/exhibits/charters/constitution_transcript.html

“Free Inhabitants” in Article IV of the Articles of Confederation was changed to “Citizens” in Article IV, Section 2, Clause 1 of the Constitution. This was done to confer the rule of naturalization to Congress.

So based on Article IV of the Articles of Confederation and Article IV, Section 2, Clause 1 of the Constitution, there were negros and mulattos who were citizens and there were negros and mulattos who were free persons (of color) but not citizens.

That there were black citizens, after the adoption of the Constitution, is shown in

the following:

“ ... [N]o master or captain of any ship or vessel, or any other person, shall import or bring, or cause to be imported or brought, any negro, mulatto, or other person of colour, ***not being a native, a citizen, or registered seaman of the United States*** ... into any port or place of the United States, which port or place shall be situated in any state which by law has prohibited or shall prohibit the admission or importation of such negro, mulatto, or other person of colour.” Section 1 of An Act to Prevent the Importation of Certain Persons into Certain States, Where, by the Laws Thereof, Their Admission is Prohibited; Approved, February 28, 1803.

http://abolition.nypl.org/content/docs/text/Act_of_1803.pdf

(may have to refresh this link)

“ ... ***That those people of color, who are citizens of any state of the Union, have a right to come here and claim all the privileges of citizenship under that clause of the constitution which gives to the citizens of each state all the privileges and immunities of citizens in the several states.*** That to cause a warrant to issue for surety of good behavior or of the peace, without an allegation of some crime actually committed, or of the apprehension of some crime, supported by oath, or affirmation, would be contrary to the constitution of the United States, and therefore the charter must not be construed so as to give that power.” Costin v. Washington: 6 Fed. Cas. (No. 3266) 612, at 613; 2 Cranch, C. C. 254 (1821).

<http://books.google.com/books?id=pwA7AQAAIAAJ&pg=PA613#v=onepage&q&f=false>

Thus, according to *Dred Scott v. Sanford*:

“It is true, every person, and every class and description of persons, ***who were at the time of the adoption of the Constitution recognised as citizens in the several States, became also citizens of this new political body; but none other***; it was formed by them, and for them and their posterity, but for no one else. And the personal rights and privileges guarantied to citizens of this new sovereignty were intended to embrace those only who were then members of the several State communities, or who should afterwards by birthright or otherwise become members, according to the provisions of the Constitution and the principles on which it was founded. It was the union of those who were at that time members of distinct and separate political communities into one political family, whose power, for certain specified purposes, was to extend over the whole territory of the United States. And it gave to

each citizen rights and privileges outside of his State which he did not before possess, and placed him in every other State upon a perfect equality with its own citizens as to rights of person and rights of property; it made him a citizen of the United States.” Dred Scott v. Sanford: 60 U.S. (Howard 19) 393, at 406 thru 407 (1856). [Footnote 6]

<http://books.google.com/books?id=-CQ3AAAAIAAJ&pg=PA403#v=onepage&q&f=false>

The case of *Dred Scott v. Sanford* dealt with free persons of color; that is, with black slaves emancipated, after the adoption of the Constitution of the United States of America:

“The question is simply this: 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? One of which rights is the privilege of suing in a court of the United States in the cases specified in the Constitution.

It will be observed, that the plea applies to that class of persons only whose ancestors were negroes of the African race, and imported into this country, and sold and held as slaves. The only matter in issue before the court, therefore, is, whether the descendants of such slaves, when they shall be emancipated, or who are born of parents who had become free before their birth, are citizens of a State, in the sense in which the word citizen is used in the Constitution of the United States. And this being the only matter in dispute on the pleadings, the court must be understood as speaking in this opinion of that class only, that is, of those persons who are the descendants of Africans who were imported into this country, and sold as slaves.

The question then arises, whether the provisions of the Constitution, in relation to the personal rights and privileges to which the citizen of a State should be entitled, embraced the negro African race, at that time in this country, or who might afterwards be imported, who had then or should afterwards be made free in any State; and to put in the power of a single State to make him a citizen of the United States, and endue him with the full rights of citizenship in every other State without their consent? Does the Constitution of the United States act upon him whenever he shall be made free under the laws of a State, and raised there to the rank of a citizen, and immediately clothe him with all the privileges of a citizen in every other State, and in its own courts?

The court think the affirmative of these propositions cannot be maintained. And if it cannot, the plaintiff in error could not be a citizen of the State of Missouri, within the meaning of the Constitution of the United States, and, consequently, was not entitled to sue in its courts." Dred Scott: 60 U.S. (Howard 19) 393, at 403, 406 (1856).

<http://books.google.com/books?id=-CQ3AAAAIAAJ&pg=PA403#v=onepage&q&f=false>

Therefore, the case of *Dred Scott v. Sanford*, had nothing to do with black citizens. Nor did the case apply to ancestors who were negroes of the African race, and imported into the country of the United States, and sold and held as servants.

[Footnote 2]

Thus, a black slave, set free after the adoption of the Constitution of the United States of America, cannot, UNFORTUNATELY, be a citizen of a State, as well as a citizen of the United States because, although a free person, he or she is not a citizen required by Article IV, Section 2, Clause 1 of the Constitution.

In addition, a black slave made a citizen of a State, by a State, after the adoption of the Constitution could not be a citizen of a State under Article IV, Section 2, Clause 1 because such a person; that is, the black slave, had to be a citizen of a State under Article IV, Section 2, Clause 1 of the Constitution:

"It is true, every person, and every class and description of persons, ***who were at the time of the adoption of the Constitution*** recognised as citizens in the several States, became also citizens of this new political body; but none other; it was formed by them, and for them and their posterity, but for no one else. And the personal rights and privileges guarantied to citizens of this new sovereignty were intended to embrace those only who were then members of the several State communities, or who should afterwards by birthright or otherwise become members, according to the provisions of the Constitution and the principles on which it was founded. It was the union of those who were at that time members of distinct and separate political communities into one political family, whose power, for certain specified purposes, was to extend over the whole territory of the United States. And it gave to each citizen rights and privileges outside of his State which he did not before possess, and placed him in every other State upon a perfect equality with its own citizens as to rights of person and rights of property; it made him a citizen of the United States." Dred Scott v. Sanford: 60 U.S. (Howard 19) 393, at 406 thru 407 (1856).

<http://books.google.com/books?id=-CQ3AAAAIAAJ&pg=PA403#v=onepage&q&f=false>

The answer of course is to modify Article IV, Section 2, Clause 1 of the Constitution so that those born after the adoption of the Constitution can become citizens of a State, as well as citizens of the United States. [Footnote 8]

Footnotes:

1. There were also free persons of color; that is, black slaves emancipated, before the adoption of the Constitution of the United States of America as well as after the adoption of the Constitution.

2. Servants as well as slaves are recognized in the Constitution of the United States of America at Article I, Section 2, Clause 3, which provides:

“Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the ***whole Number of free Persons, including those bound to Service for a Term of Years***, and excluding Indians not taxed, ***three fifths of all other Persons***.”

http://www.archives.gov/exhibits/charters/constitution_transcript.html

3. These provisions of this act appear in the A Law Dictionary Adapted to the Constitution and Laws of the United States of America and of the Several States of the American Union, John Bouvier, Sixth Edition, Volume II, 1856, at pages 516:

<http://books.google.com/books?id=zmc8AAAAIAAJ&pg=PA516#v=onepage&q&f=false>

4. The reader will find the following useful in understanding Article IV of the Articles of Confederation:

“Inhabitants” included aliens, foreigners, citizens, and servants (but not slaves, slaves were considered property).

“Free inhabitants” included aliens, foreigners and citizens.

“Citizens” included citizens and servants.

“Free citizens” included only citizens.

And the following useful in comprehending Article VI, Section 2, Clause 1 of the Constitution of the United States of America, and other provisions:

“Free inhabitants” included aliens, foreigners, citizens, and servants (but not slaves, slaves were considered property).

“Inhabitants” included aliens, foreigners and citizens.

“Free citizens” included citizens and servants.

“Citizens” included only citizens.

Note: the several States, under the Articles of Confederation, had the power to naturalize. Therefore, within each State, there were aliens (living), foreigners (visiting), citizens (native and naturalized) and servants (citizens under contract). In the Constitution of the United States of America (organic), servants are treated as free persons. **[See Footnote 2]** As such, the phrase “free inhabitants” or “free inhabitant” does not appear. Rather, the term “inhabitant” is written; at Article I, Section 2, Clause 2; Article I, Section 3, Clause 3; and Article II, Section 1, Clause 3. And, of course “citizens” appears at Article IV, Section 2, Clause 1, rather than “free citizens.” “Inhabitants” should appear at Article IV, Section 2, Clause 1 instead of “free inhabitants”, however the term “citizens” is used as the rule of naturalization was given to Congress. Since servants are considered to be free persons, and thus by extension, free citizens, under the Constitution of the United States, and since aliens and foreigners can only be naturalized, this leaves citizens.

5. This day in History, June 21, 1788, lead story: “U.S. Constitution ratified”

<http://www.history.com/this-day-in-history/us-constitution-ratified>

6. It is to be noted that later in this opinion, the *Dred Scott* Court stated the following regarding negroes and mulattos before the Constitution:

“A clause similar to the one in the Constitution, in relation to the rights and immunities of citizens of one State in the other States, was contained in the Articles of Confederation. But there is a difference of language, which is worthy of note. The provision in the Articles of Confederation was, ‘that the free inhabitants of each of the States, paupers, vagabonds, and fugitives from justice, excepted, should be entitled to all the privileges and immunities of free citizens in the several States.’

It will be observed, that under this Confederation, each State had the right to decide for itself, and in its own tribunals, whom it would acknowledge as a free inhabitant of another State. ***The term 'free inhabitant,' in the generality of its terms, would certainly include one of the African race who had been manumitted.*** But no example, we think, can be found of his admission to all the privileges of citizenship in any State of the Union after these Articles were formed, and while they continued in force. (*) And, notwithstanding the generality of the words 'free inhabitants,' it is very clear that, according to their accepted meaning in that day, they did not include the African race, whether free or not." Dred Scott v. Sanford: 60 U.S. (Howard 19) 393, at 418 (1856).

<http://books.google.com/books?id=-CQ3AAAAIAAJ&pg=PA418#v=onepage&q&f=false>

(*) See The Act for the gradual abolition of slavery, passed the first day of March, 1870, 1 *Smith's Laws of Pennsylvania* 492 at the beginning of this work. Negro and mulatto slaves were made servants. This was the first step to becoming a free citizen. This same procedure had been done in the early history of the colonies. **[See Footnote 7]**

7. "Slavery, however, did not develop at once in Colonial America. The first Negroes came as indentured servants, and as their indentures ended they were freed. Not until the 1660's did enslavement begin. Between 1664 and 1682 slave codes in many colonies transformed the Negro servant into a slave." History of the Labor Movement in the United States; From Colonial Times to the Founding of the American Federation of Labor; Philip S. Foner; (International Publishers Co., Inc.); 1947, 1998 edition; Vol. 1, page 19.

<http://books.google.com/books?id=yVoxQv0KqwYC&lpg=PP1&pg=PA19#v=onepage&q&f=false>

"... However, the first black women to arrive in America were indentured servants. Twenty blacks, including three black women, traveled on a Dutch ship to Jamestown in 1619, a year before the Mayflower voyage. Prohibited by law to sell baptized blacks into slavery, the government bought their contracts and sold them as indentured servants to colonial administrators. When their contracts expired, the early African arrivals became farmers, artisans, and landowners who voted, had servants, and even some slaves." Regulating the lives of Women, Social Welfare Policy from Colonial Times to the Present; Mimi Abramovitz; (South End Press collective); 1988, 1996 revised edition; page 48.

<http://books.google.com/books?id=a5I-yK2SttIC&lpg=PP1&pg=PA48#v=onepage&q&f=false>

“By 1619, the British colony at Jamestown, Virginia, had survived for more than a decade. The residents of the settlement had fought with the local natives and struggled continuously to eke out a living from the land. Starvation, disease, and death were frequent visitors, and the future of the enterprise continued to be in doubt.

In August of that year, a Dutch ship arrived. The master of the ship needed provisions and offered to trade his only cargo: about 20 black Africans. Many of the details of this transaction have been lost, and we probably will never know exactly how these people came to be chained in the hold of a ship. Regardless, this brief episode was a landmark event in the formation of what would become the United States. In combination with the strained relations between the English settlers and American Indians, the presence of these first few Africans raised an issue that has never been fully resolved: How should different groups in this society relate to each other?

The colonists at Jamestown had no ready answer. In 1619, England and its colonies did not practice slavery, so these first Africans were probably incorporated in colonial society as indentured servants, contract laborers who are obligated to serve a master for a specific number of years. At the end of the indenture, or contract, the servant became a free citizen. The colonies depended heavily on indentured servants from the British Isles for labor, and this status apparently provided a convenient way of defining the newcomers from Africa, who were, after all, treated as commodities and exchanged for food and water.

The position of African indentured servants in the colonies remained ambiguous for several decades. American slavery evolved gradually and in small steps; in fact, there was little demand for African labor during the years following 1619. By 1625, there still were only 23 blacks in Virginia, and that number had increased to perhaps 300 by mid-century (*Franklin & Moss*, 1994, p. 57). In the decades before the dawn of slavery, we know that some African indentured servants did become free citizens. Some became successful farmers and landowners and, like their white neighbors, purchased African and white indentured servants themselves (*Smedley*, 1999).” Diversity and Society: Race, Ethnicity, and Gender; Joseph F. Healey; (Pine Forge Press); 1945, 2010; 3rd edition; page 107.

http://books.google.com/books?id=XmC3Q5Y8k_gC&lpg=PP1&pg=PA107#v=onepage&q&f=false

8. The following should do:

“All persons born in a State, and subject to its jurisdiction, after the adoption of this Constitution, shall be a citizen of that State, and shall be entitled to all Privileges and Immunities of Citizens in the several States.”