

Jones (2021) Was the U.S. created for White people?

25 April 2021

Dear Adam Curry,

As a former Constitutional law professor, and as a current Constitutional scholar, I feel the need to comment about the comments of the current American UN ambassador, *in re* the founding principles of the United States and “race” policies.

In sum, there is clear evidence from American legal history (jurisprudence) that the Founders (from the attendees at the Philadelphia Convention in 1776, to the members of every State House who voted in support of the adoption of the Constitution in 1789) never intended that Black people (including mulattos, quadroons, and octaroons – individually and as a class) be eligible for citizenship.

Among those persons who claim that the 14th Amendment was either never ratified properly and or created a new United States, and or creates federal citizens – which never before existed – they often cite the court opinion in *Dred Scott* wherein the Justice Taney reviewed the legal history and ideas of citizenship from the 1700s through the 1850s.

Happy reading. Your loyal knight (Sir Not a Dick) to be,

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In his ruling opinion in *Dred Scott*, 60 U.S. 393 (1856),<sup>1</sup> Justice Taney wrote ... amongst other things, the following:

Paragraph 22:

“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, guaranteed [*sic*] by that instrument to the *citizen*? ...”

[Editor’s note: Spoiler alert, Taney says that the answer is, *NO*.]

Paragraph 30

“The question [is] whether the provisions of the Constitution, in relation to the personal rights and privileges to which the citizen of a State [is] entitled, embraced the negro African race, at that time [they were] imported, [or] afterwards be made free in any State; and to put it in the power of a single State to make [the negro] a citizen of the United States, and endue him with the full rights of citizenship, in every other State, without [the] consent [of the other States]? Does the Constitution of the United States act upon him, whenever he shall be made free under the

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<sup>1</sup> Text of *Dred Scott* opinion taken from: <https://www.law.cornell.edu/supremecourt/text/60/393>

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laws of a State, and raised [the emancipated negro] 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?"

Paragraph 31:

... the affirmative of these propositions *cannot be maintained*. [Therefore], the plaintiff [is] 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.

Paragraph 32:

“... 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, also became citizens of [the United States]; but none other; it was formed by them, and for them and *their posterity*, but for no one else.”

Paragraphs 35-36

“at the time of the Declaration of Independence, and when the Constitution of the United States was framed and adopted ... [negroes were] *regarded as beings of an inferior order*, and altogether unfit to associate with the white race, either in social or political relations; and so far inferior, that they had no rights which the white man was bound to respect; and that the negro might justly and lawfully be reduced to slavery *for his benefit*.”

Paragraph 44:

[State laws, in existence at the time of the adoption of the Declaration of Independence and Constitution], show that 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 [them] as subjects with absolute and despotic power; and [that] they then looked upon [the negro] as so far below them, in the scale of created beings, that intermarriages between white persons and negroes or mulattoes were regarded as unnatural and immoral, and punished as crimes .... And no distinction in this respect was made between the free negro or mulatto and the slave, but this stigma, of the deepest degradation, was fixed upon the whole race.”

Paragraph 50

“... the men who framed this declaration [of Independence] were great men—high in literary acquirements—high in their sense of honor, and incapable of asserting principles inconsistent with those on which they were acting. They perfectly understood the meaning of the language they used, and how it would be understood by others; and they knew that [the Declaration] would not, in any part of the civilized world, be supposed to embrace the negro race, [a race] which, by common consent, had been excluded from civilized Governments and the family of nations, and doomed to slavery.”

Paragraph 53

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“... there are two clauses in the Constitution which point directly and specifically to the negro race *as a separate class* of persons, and show clearly that they were not regarded as a portion of the people or *citizens* of the Government then formed.”

Paragraph 59

“[In] 1822, the Court of Appeals of Kentucky<sup>2</sup> decided that free negroes and mulattoes were not citizens, within the meaning of the Constitution of the United States ...;

Paragraph 61

Thus, Massachusetts, in 1786, passed a law ... like the law of 1705, [that] forbids the marriage of any white person with any negro, Indian, or mulatto, and inflicts a penalty of fifty pounds upon any one who shall join them in marriage; and declares all such marriage absolutely null and void, and degrades ... the unhappy issue of the marriage [with] the stain of *bastardy*. And this mark of degradation was *renewed*, and again impressed upon the race, in the ... revised code [of] 1836. This code forbids any person from joining in marriage, any white person, with any Indian, negro, or mulatto, and subjects [offenders] to imprisonment, not exceeding six months ... and to a fine of not less than fifty nor more than two hundred dollars; and, like the law of 1786, it declares the marriage to be absolutely null and void.”

Paragraph 62

“... up to the time of the adoption of the Constitution, there is nothing in the legislation of the State [of Connecticut] indicating any change of opinion as to the relative rights and position of the white and black races in this country, or indicating that it meant to place the latter, when free, upon a level with its citizens.”

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2 See *Amy v. Smith*, 11 Ky. 326 (1822). This decision ruled against Amy [a slave], holding ... that, because she could not be a citizen of *any* state, she was not entitled to invoke the Privileges and Immunities Clause of the U.S. Constitution to challenge a Kentucky [statue which restricted Africans and Mulattos from suing for freedom]. *Id.* at 330-335. According to the majority:

“No one can ... be a citizen of a state, who is not entitled, upon the terms prescribed by the institutions of the state, to all the rights and privileges conferred by those institutions upon the highest class of society.” *Id.* at 333. Thus, Amy, [who claims] that she had become a free *citizen* in Pennsylvania or Virginia prior to her being sold into Kentucky:

“can not have been a citizen, either of Pennsylvania or of Virginia, unless she belonged to a class of society, upon which, by the institutions of the states, was conferred a right to enjoy all the privileges and immunities appertaining to the state. ... there is no evidence in the record to show [any state conferred rights upon her], and the presumption is against it. Free negroes and mulattoes are, almost everywhere, considered and treated as a degraded race of people; insomuch so, that, under the constitution and laws of the United States, *they can not become citizens of the United States*. ... [A]s the laws of the United States do not now authorize any, but a white person, to become a citizen, it marks the national sentiment upon the subject, and creates a presumption that no state had made persons of colour citizens.” *Id.* at 334.

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#### Paragraph 75

“ ... in 1822, Rhode Island ... passed a law forbidding ... marriage [of] any white person with any negro, Indian, or mulatto, under the penalty of two hundred dollars, and declaring all such marriages absolutely null and void; and the same law was again re-enacted in ... 1844. So ... the strongest mark of inferiority and degradation was fastened upon the African race in that State.”

#### Paragraph 77

“... More especially, it cannot be believed, that the large slaveholding States, regarded [Africans] as included in the word *citizens*, or would have consented to a Constitution which might compel [the States] to receive [Africans as citizens] from another State. For if they were so received, and entitled to the privileges and immunities of citizens, it would exempt [Africans] from the operation of the special laws and from the police regulations which [the white race] considered to be necessary for their own safety. It would give to persons of the negro race, [if] recognised as citizens in any one State of the Union, the right to enter every other State whenever they pleased ... without pass or passport ... to sojourn there as long as they pleased, to go where they pleased at every hour of the day or night without molestation ...; and it would give them the full liberty ... to hold public meetings upon political affairs, and to keep and carry arms wherever they went. And all of this would [endanger] the peace and safety of the State.”

#### Paragraph 93

“And even as late as 1820, (chap. 104, sec. 8) ... the City of Washington, the corporation is authorized ‘to restrain and prohibit the nightly *and other disorderly* meetings of slaves, free negroes, and mulattoes,’ thus associating them together in its legislation; ... ‘And to punish such free negroes and mulattoes by penalties not exceeding twenty dollars for any one offence; and in case of the inability ... to pay any such penalty and cost thereon, to cause him or her to be confined to labor for any time not exceeding six calendar months.’ ...”

#### Paragraph 94

“This law, like the laws of the States, shows that *this class of persons* were governed by special legislation ... always connected with provisions for the government of slaves, and not with those for the government of free white citizens. ...”