American Citizenship:
A Birth Right for Some and Not for Others

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The American's Creed*

I believe in the United States of America, as a government of the people, by the people, and for the people; whose just powers are derived from the consent of the governed; a democracy in a republic; a sovereign Nation of many sovereign States; a perfect union, one and inseparable; established upon those principles of freedom, equality, justice, and humanity for which American patriots sacrificed their lives and fortunes.

I therefore believe it is my duty to my country to love it, to support its Constitution, to obey its laws, to respect its flag, and to defend it against all enemies.

-William Tyler Page

Introduction

Citizenship is much in the news. For example, President Obama recently issued an executive order that circumvented the Congress and provided many citizenship rights to young Mexicans brought to the United States illegally while pre-teenagers. Interesting, too, is the process one needs to follow when applying for citizenship, especially the testing method. The government supplies 100 test questions along with the answers. Applicants will be asked ten questions from this list. To successfully pass the test, one need answer only six correctly. Further, most of the questions are not at all difficult. An early question asks, "What are the colors of the American flag?" Another asks, "Who is President of the United States?" Some would find still another question's answer startling, to wit, "What are some of the benefits of becoming a citizen of the United States?" The first benefit listed is "to get a job with the Federal government." Many Americans would disagree with that answer, thinking that the principal

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*Adopted by the U.S. House of Representatives April 3, 1918.

benefit of citizenship is the opportunity to find work suited to their interests and ability, which for many immigrants means starting their own business, however humble. Interestingly, a few weeks ago I met a thirty year old Sudanese woman who three days before had become a newly minted American citizen. I, of course, asked her what it was about America that drew her here. Her answer was one word. "Opportunity," she replied with great joy and enthusiasm.

Most Americans' knowledge about the development of American citizenship is modest. Few, for example, know that at the heart of the citizenship question was the presence of blacks. Were they citizens or not? This was unsettled in the writing of the Federal Constitution in 1787, evidenced by that fact that Article I refers to them as "three-fifths of a person." Uncertainty about the place of blacks in society is, of course, related to slavery and its expansion in the middle of the 19th century. This study shows that the issue of blacks and citizenship runs through American experience from the founding in 1776 to the passage of the Voting Rights and Civil Rights Acts of the mid-1960s. Basically for most American blacks most of the time since independence, citizenship was an elusive goal—in the North and in the South. Thus, the title of this paper: "American Citizenship: Birthright for Some and Not for Others."

Citizenship in America is a massive subject.[1] This paper will, therefore, cover a few crucial parts of it. Other Vision & Values conference papers will discuss additional aspects of the subject. The first part of this essay reviews the roots of the idea of citizenship in English experience. A second part examines the process by which colonial Americans sparred with English officials in the decades before the Declaration of Independence over the question of their relationship to the Empire. It was here, as John Adams said: "The Revolution took place in the hearts and minds of the people a generation before the Declaration." A third phase in the definition of citizenship began at the moment the Declaration was published. It was then that the term *citizen* first appeared. But, what did it mean? It surely was different from mere subjectship of the past.

Moreover, it became clear immediately in the Confederation that each sovereign state

[1] C*itizenship* is only one of many possible relationships that people may have to the society in which they live. Others found in other countries include *subject, inhabitant, alien, denizen, slave, peon, guest,* and more. None of these, of course, has the desirable qualities—opportunity, freedoms, good economic conditions, and more—that most American citizens enjoy. In a few words, American citizenship is unique—with the full meaning of *unique* implied.

had to decide what the term *citizen* meant in its jurisdiction. And, the creation of the Federal Government in 1789 did not really solve the question of citizenship's meaning either. After all, each state still saw itself as retaining a degree of—even ultimate—sovereignty. By1800 no clear resolution of citizenship's meaning was agreed on.

The opening of the 19th century marked the beginning of another very important segment of the American experience. Its central theme was a very long and sustained argument about the nature of citizenship because its meaning was tied to the question of slavery and its expansion into new states and territories. But, it was more than about slavery. It was also about the place of black people in American society. There were a half million free blacks in America in 1800—about half in the North and half in the South.

The place of blacks was largely governed by the fact that all whites saw blacks as Providentially destined to serve white people. They were viewed as inferior in ability, ignorant, and unequal in status, except for their physical capacity to do hard work. To many whites they were also sub-human. It is crucial to grasp this view of blacks by whites if one is to appreciate the gravity of the black citizenship question, which was dominant for more than a century after about 1820.

Resolution of the place of slavery and blacks in America after1800 was avoided for decades by a series of compromises in the Congress. Then, a new chapter in the history of citizenship began with vigorous Congressional action to restructure the South once its states seceded, including numerous statutes and the famous 13th, 14th, and 15th Amendments to the Constitution.

Yet another significant chapter in the history of citizenship began at the end of Reconstruction in 1877. Southern whites looked for ways to re-impose their way of life on Southern society, now that the Yankees were gone. This meant finding a way to return blacks to "their place." The first stage of this was the passage of Jim Crow laws that established segregation for the first time in the South. This was soon followed by another dramatic chapter in Southern history—the re-enslavement of blacks, especially in the Black Belt of the deep South. Man's inhumanity to man has seldom been worse, certainly not to this degree in American experience. Pre-Civil War slave owners were on the whole kindly when compared to the new generation of slavers that emerged from the poor white elements of the South and created new

cotton and steel industries in Mississippi and Alabama by 1900, using hundreds of thousands of "leased" (read, "enslaved") blacks. The new slaveholders were brutal, in fact, sadistic.[2] This practice continued for decades. It eased a bit under governmental pressure by the 1930s, and finally ended with the passage of the Civil Rights and Voting Rights Acts of the 1960s.

Eventually, the evils of the new slavery drove millions of blacks from the South to the North and into its emerging industrial cities like Detroit, especially after 1930. The history books call this "The Great Migration." Though the North had its own ways to segregate blacks in neighborhoods, e.g., land covenants not to sell to blacks for example, black experience in the North, including citizenship rights, was a new, freer world for many blacks, to be sure.

We turn now to a consideration of the English idea of subjectship. It grew and changed over centuries but was the heritage and foundation on which America's founders built their concept of citizenship.

I. Subjectship: The English Background.

A. Early English Background: To *Calvin's Case* in 1608. Terms like "*citizen,*" "*subject,*" "*vassal,*" "*peon,*" and others, as observed in Note 1 above,[3] are all comments on ways inhabitants of land or territory relate to the person or entity that controls the land or territory. It's possible, of course, that nomadic inhabitants or wandering tribes may settle in an area not effectively controlled or governed by anyone. In the West, however, since Roman times, settlements have been regulated by rules governing those who live there. This practice informed and shaped English society, and by the time of the planting of colonies in North America, they had evolved into a king and "subject" relationship.

Feudalism was one element in this background. As is well known, feudalism was born at the time Rome was unable to continue providing protection to some inhabitants in its jurisdiction in the face of advancing Huns, Visigoths, and other barbarians (circa 450 CE). Peace and security always being essential for any community, masters of estates banded together and agreed by contracts to protect each other when danger came. Over time these arrangements became complex as some lords became vassals of other lords. Even church bishops became lords

[2] Sadists take delight in cruelty to others.
[3] See note 1.

or vassals of other lords or vassals.[4]

The important point here is that certain elements of feudal practices remained a part of the evolving social/political structure in England as it moved from the medieval to modern era, the year 1500 being the usual date marking this transition. For example, feudalism's contractual basis for political relationships remained or reappeared in the thinking of people like John Locke, especially in his "social contract" theory.[5] A strong sense of allegiance on the part of the lesser parties—vassals—to the dominant party, lords or kings, also continued as a basic element in the feudal system. As we shall see, allegiance has also been a crucial element in citizenship and in the American governmental structure from its formation to the present.

But not all governing relationships have been based on feudal practices. Other relationships arose when a "war lord" or prince or king sought to impose his will to control certain territory by the power of the sword. This might be accomplished by threat or by actual battle. And, what was the relationship in such cases between the conqueror and the conquered? King and "subject" came to describe this relationship. The king was the unquestioned sovereign for the simple reason that he possessed "a monopoly of the power of the sword" over his subjects. Allegiance by the subjects to the king was required; absence of it raised the question whether the subject was treasonous. Powerful kings also had control over the land occupied by his subjects, taxing it as needed. Gradually in the English experience the power of the king, certainly by the time of absolutist Henry VIII (1491-1547), was assumed to be not only natural but also perpetual, even based on "divine right."[6]

To sum up and emphasize, by the beginning of the 17th century in England, when King James VI of Scotland also became James I of England upon the death of Queen Elizabeth I in 1603, the idea that most inhabitants of the land were subjects of the king was unquestioned. Moreover, the king assumed that he ruled by divine right, i.e., he was chosen by God to rule. He also assumed that his English subjects owed him full allegiance, that is, loyalty to him above all others, and that this allegiance never wavered. In exchange for loyalty and allegiance he was

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[4] See feudalism in any standard encyclopedia for details of the system and its development.
[5] A good introduction to Locke and his social thought is Roger Woolhouse, *John Locke, A Biography* (Cambridge: Cambridge University Press, 2007).
[6] See Johann P. Sommerville, *Royalists and Patriots: Politics and Ideology in England, 1603- 1640* (London: Longmans, 1999), 9-54.

obligated to provide protection from marauders, bandits, and other threats to safety and security.

B. *Calvin's Case* (1608). We emphasize *Calvin's Case*[7] briefly here because it stands out in British legal history as one of the most important constitutional cases and because it turned out to be the definitive statement on the nature and condition of Englishmen as subjects. The basis of the case was a dispute about the legal status of Richard Calvin, who was born in Scotland months after King James became King of England. A joint commission had proposed that the common law be equally valid in both nations which would mean that infant Richard Calvin was a subject in both Scotland and England with all the rights and privileges that it entailed. But the English House of Commons refused to adopt this view. Calvin, therefore, would not have all the rights of an Englishman. Eventually, the dispute arrived in one of England's high courts in which several judges and justices sat.

The case became famous and definitive because of Lord Coke's opinion.[8] He was chief justice of Common Pleas and the most respected jurist in England. Importantly, he also published his opinion in his *Reports;* everyone could read them. When the dust settled and lawyers abstracted the essence of Coke's opinion, the case became precedent and normative on the question of allegiance and subjectship for generations to come. The fog of uncertainty about this issue, which had accumulated for centuries in the backwaters of English jurisprudence, became more clear when Justice Coke wrote, "Once a subject always a subject." Coke was silent on the question whether feudal contractual relationships helped define subjectship, the contractual element being an element of feudal contracts. That is to say, his silence seemed to signal that a contractual basis of allegiance and subjectship was no longer basic in English law, at least in his view. On the other hand, he embraced the idea that subjectship and allegiance were based on natural principles (place of birth), and that the relationship was immutable and perpetual. From another angle, this meant that one was born a subject and owed allegiance to the sovereign who ruled the land where he was born, just as the sovereign owed protection to those born into his kingdom. The analogy, in Coke's view, was that of a parent and child (natural). Parents naturally

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[7] Steve Shepard, ed., "Calvin's Case," *The Selected Writings of Sir Edward Coke*, vol. 1 (Indianapolis: Liberty Fund, 2003).

[8] James H. Kettner, *The Development of American Citizenship, 1608-1870* (Chapel Hill: University of North Carolina Press, 1978). Kettner's book is basic for any consideration of citizenship in America to the end of Reconstruction. I have used it extensively in the early sections of this paper. As for *Calvin's Case*, he discusses it intermittently on pp. 7-8, 15-28, 36-37, 52-53, and elsewhere. His view of this case has been assumed here.

owed security and protection to their child. In return the child owed the parents loyalty. Allegiance owed the king preceded any possibility of allegiance to a parliament or laws.

Coke's opinion in *Calvin's Case* on subjectship—that it was natural, immutable, and perpetual, that allegiance by subjects was naturally owed to the sovereign—remained settled law in England for generations, down to the 1770s.

We note here in passing that American colonials rejected this view by the 1760s. As we shall see, allegiance for them was not immutable, permanent, and rooted in nature. To emphasize, a sharply defined difference between England and her American colonies was a simmering question—especially during the first half of the eighteenth century. The essence of the question involved the nature of allegiance and sovereignty.

There was an additional significant development in 17th-century England that affected the political theory of subjectship and citizenship in the American Revolution. It was Republicanism that was born in the English Civil War.

C. Republican ideas in the English Civil War (1640-1660).[9] We turn now to a consideration of the English Civil War's turbulent intellectual climate. John Adams and other American thinkers in the Revolutionary era drew from it many of their own ideas about what a republic ought to be. The English Civil War was essentially the first chapter in a struggle over the question of sovereignty in English society—a struggle between the Crown and Parliament. For more than 100 years monarchs such as Henry VIII, Elizabeth I, James I, and Charles I, ruled as "royal absolutists." There was, however, a parallel claim to sovereignty in English society by nobles, going back to the days of the Magna Carta (1215). By the 17th century this line of thought was embodied in Parliament.

A civil war was underway by the 1640s and then King Charles I was defeated in battle and subsequently executed by Parliamentary forces in 1649. In general terms historians refer to England's government from 1649 to 1660 as the English Commonwealth or Republic. It ended

[9] Paul A. Rahe in his *Against Throne and Altar: Machiavelli and Political Theory under the English Republic* (Cambridge: Cambridge University Press, 2008) makes a significant observation on the book's "face" page. Says Rahe, "Modern Republicanism . . .owes an immense debt to the republican experiment conducted in England between 1649, when Charles I was executed, and 1660 when Charles II was crowned. Though abortive, this experiment left a legacy in the political science articulated by its champions, John Milton, Marchamont Nedham, and James Harrington. . . ." We have drawn on Rahe's work for an understanding of Milton's ideas and how they informed some of America's Founders.

with Parliament's restoration of the crown to Charles II in 1660.

All sorts of social and political proposals about what English society ought to be were proffered in the Commonwealth era—too many to note here.[10] What we do need to focus on, however, are the efforts of men like John Milton to help shape a new English social order; Milton wrote and spoke much about republicanism. His influence was considerable since he was not only famous as a poet—his poems were frequently political tracts—but also famous and powerful once he was appointed the Commonwealth's Secretary for Foreign Tongues. This gave him immediate access to political leaders both in and out of Parliament. Moreover, as likely the most well-read man of his age—master of the ancients (in the original language), the church fathers, and the Bible—Milton drank from the riches of writers who expounded on the virtues of republican government.[11]

Paul Rahe has pointed out in his *Against Throne and Altar: Machiavelli and Political Theory under the English Republic* that the writings of Niccolo Machiavelli (1469-1527) were widely read and studied in the 17th century, especially during the English Civil War. It was not so much his *The Prince*—famous in modern times—that fascinated nascent republicans like John Milton. Rather, it was Machiavelli's *Discourse on Livy* (short title) which was an extended comment on republicanism, classical as well as Machivelli's own peculiar version of it, that fascinated Milton and his friends.[12] For our purposes, it is enough to note that Machiavelli

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[10] One leading authority on radical elements in this era is Christopher Hill. Two of his books are especially useful for studying radical leaders in the Puritan Revolution. They are *The Century of Revolution, 1603-1714* (London: Van Nostrand Reinhold, 1980), see especially pp.161-185; and *The World Turned Upside Down: Radical Ideas During the English Revolution* (London: Penguin, 1991). William Haller, a long time Puritan scholar who especially focused on John Milton's writings, has several books that are also helpful on radical ideas in the Puritan Revolution. One is *Liberty and Reformation in the Puritan Revolution* (New York: Harper Collins, 1955). Another edited piece is *Tracts on Liberty in the Puritan Revolution, 1636-1647* (New York: Harper Collins, 1934).

[11] Rahe, *Against Throne*, 102.

[12] Machiavelli, working a century and a half earlier, thinking as a Renaissance humanist, was a kind of intellectual revolutionary—rejecting much conventional wisdom or giving it his trademark cynical twist. As for classical republicanism, Machiavelli rejected it, critiquing classical writers as he wrote. That is to say, he rejected their view that man by nature or natural law possessed a right to select their own rulers—that essential principle of classical republicanism. Machiavelli did embrace the notion that people ought to be able to select their own ruler, but he did so on grounds that today would be called pragmatic. For example, he thought a republican-based government was much more stable and also more difficult for a prince (ruler) to overthrow.

If Machiavelli rejected classical writers and their republican views on government out of hand, where did he get his view, one may wonder. Paul Rahe tells us, "There was one obvious candidate the poet, Lucretius, author of *De rerum natura,"* (*On the Nature of Things*). Rahe continues, "We should not, then, be surprised that the account of the origins of human society and the treatment of the political psychology of religion found in

rejected the classical (Roman) republicanism that Milton eventually embraced.[13] Milton's principal work on republican theory was his *The Tenure of Kings and Magistrates*,[14] drafted at the time Charles I was being tried and executed. Good Christian that he was, Milton tended to augment a classical republican citizenship view with biblical material. For example, said Milton, "All men were naturally born free, being in the image and resemblance of God himself." Yet, they sinned, he noted, and therefore, needed a government to establish order. Thus, "they agreed by common league to bind each other from mutual injury, and jointly to defend themselves against any that gave disturbance . . . ." Those who hold power "in trust from the people" should be held accountable by the people "in whom the power yet remains fundamentally . . .[it] cannot be taken from them, without a violation of their natural birthright." He states as well that the people may from time to time take back power from rulers. Thus, at all times governmental power and authority in the minds of English republicans like Milton came from the people.

It is not too much to say that in these comments, in the context of widespread discussions about the virtues of republican government by his contemporaries, that John Milton stated several ideas that appeared in the American Revolution. His "all men are born free" implies that they are, therefore, born equal in condition and rights. Further, he embraced the essential element of republicanism that people select their own governors. Governors, therefore, rule with "the consent of the governed."

Milton's republicanism does not, however, imply a democracy. The American Founders were not democrats either. They, like Milton, saw themselves as republicans. Following the practices of the ancients—Aristotle and Cicero, for example—Milton sees classes of people, upper, middle, and lower. For him, like the Founders later, only the upper class, people of education and social standing, were viewed as qualified to select rulers.

Significantly, "citizen" is an important element in this discussion. Milton and his contemporaries used the phrase republican citizenship routinely, a term he borrowed from the ancients. Those who qualified as citizens were a limited number of a republic's inhabitants to be

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Machiavelli's *Discourse* should owe a great deal to the anthropology articulated in *De rerum natura.*" Lucretius (99 BCE -50 BCE) was one of several followers of Epicurus (ca. 300 BCE), a thinker Machiavelli greatly admired. As is well known, a central idea of Epicurus was that "pleasure is the greatest good."

[13] Rahe, *Against Throne*, 104-138.

[14] Don M. Wolf, ed. *Complete Prose Works of John Milton*, vol. 3 (New Haven: Yale University Press, 1953-1982), 198-206.

sure. To emphasize, English republicans during the Civil War were firmly committed to a government that was selected by the Commonwealth's citizens. This view developed in vigorous opposition to the traditional hereditary monarchy that had ruled England for generations. Yet, republican principles did not imply democracy. Of course, the American Founding Fathers were not democrats either, a point we shall examine later.

Attempts to create a lasting republican government in England in the 1650s ultimately failed, in part because of the absence of leadership with the death of Oliver Cromwell in 1658. Republican efforts ended when Charles II was invited back by Parliament to sit on England's throne in 1660.

In winding up comments on republicanism in the age of the English Civil War, we ask how it was that the revolutionary writings of this era came into the hands of America's founders in the 1770s. The answer is that the works of Milton and other advocates of classical republicanism were frequently reprinted during the century following the restoration of the monarchy in 1660. This enabled America's Founders in the 18th century to have copies of books written by English republican writers on their library shelves.

D. Subjectship from the Restoration to the Imperial Crisis 1660-1776 and Beyond. While there is much of interest in this period, we limit our observations to a pair of items that deeply affect our understanding of subjectship, and therefore, citizenship. The first is the development of Parliamentary supremacy and the second is the appearance of new political theories from the fertile mind of John Locke. We take up each briefly.

1. Parliamentary Supremacy.[15] The political upheaval in 17th-century England, including the Civil War, was essentially a struggle for power. Would the absolutist practices of the Tudor monarchs continue among their successors? Or, would the Crown's power be curtailed by Parliament? The beheading of Charles I in 1649 dramatically limited the power of the Crown. The Commonwealth seemed to signal a wholly new era, replete with dozens of new social/political ideas—some radical as in the case of the Levelers and some more moderate as in the case of Miltonian republicans. Many monarchical loyalists, of course, were present too. When Oliver Cromwell died, there was hope briefly that the Commonwealth could continue

[15] Kettner, *American Citizenship*, 44, is one source that sums up this struggle for power between the Crown and Parliament.

since his son Richard was appointed his successor. It was immediately clear that poor Richard was not up to the task and soon efforts were made by certain members of Parliament to invite Charles I's son Charles II back from Holland to be England's king. Parliament placed certain restrictions on Charles' power. This was an important event. Indeed, it was a big step toward Parliamentary supremacy. This return of Charles II is known as The Restoration. After twenty-five eventful years on the throne, struggling with Parliament, conducting wars and palace intrigues, Charles died childless by marriage, but the father of at least twelve illegitimate children, many of whom occupied important posts in England's political and social life. He was succeeded by his brother James II in 1685. It was only a matter of months before James II was also at loggerheads with the Parliament. There were two main issues: James II's pro-French sympathies and his conversion to Roman Catholicism.

The Glorious Revolution was at hand. James II's conflict with Parliament was as troubling as his brother Charles's reign had been. His embrace of Roman Catholicism did him in. In 1689 leading members of Parliament negotiated with the Dutch Republic's William of Orange, King James II's son-in-law, to invade England and assume the throne. James II fled to France, where he had many relatives. He died in 1701. William of Orange was appointed King and his wife Mary became Queen. The replacement of James II by William and Mary is known as the Glorious Revolution.

The significant point, however, about the Glorious Revolution is that Parliament dictated the terms, and imposed the conditions under which William and Mary would rule England. The more important of these conditions was the acceptance by the new monarchs of The Bill of Rights drawn up by Parliament. This amounted to an unqualified declaration of Parliamentary supremacy. That is to say, the kind of power enjoyed by the Tudor and Stuart monarchs was now gone. As for the development of the concepts of subjectship and allegiance in the wake of the Glorious Revolution, they now had to be defined with an eye to Parliament's power. On the other hand, shifting intellectual currents—perhaps even a kind of intellectual revolution—brought several new views about political relationships into the conversation. Some of these came from the fertile mind of John Locke (1632-1704).

2. John Locke: Political Theorist. As for Locke's influence, James Kettner states it most emphatically. After referring to the emergence of Parliamentary supremacy, Kettner says,

"This fundamental shift in the structure of political authority was accompanied by a major intellectual revolution, symbolized by the constitutional theories of John Locke."[16] Locke rejected old notions of the divine right of kings bolstered by patrimonial considerations. Further, he rejected the idea that a sovereign's rights were part of the natural order and thus perpetual. In this, writing in the last decades of the 17th century, Locke was rejecting most of the doctrines of Lord Coke's famous opinion in *Calvin's Case.*

As is well known to many students of political thought, Locke postulated a fictional "social contract" which he said pre-dates the formation of governments. From another angle, Locke thought that free individuals banded together voluntarily to form communities. As for governing in such a community, Locke assumed that its new members agreed to be ruled by the will of the majority, delegating the power to rule to a government of the people's choosing. The power of kings and other rulers, thus, came from the consent of the governed.

Locke's theory pointed in the direction that America's founders eventually took. He did agree with Lord Coke's view that allegiance was owed to the person who sat on the throne because allegiance was owed to anyone who provided the means of protection in a society. By inference, of course, citizens would owe allegiance to their government for the same reason. Coke's "nature" as the basis of allegiance was replaced in Locke's scheme, and also in the thinking of American colonials, with <u>law</u> as the basis of allegiance. Thus, the axiom, "A government of laws, not of men."

It's important to emphasize, however, that Locke's new ideas remained theory in England for most of the next century, down to the early 1770s. They became popular at that time among North American colonials when they debated their constitutional status vis-a-vis Parliament. This concern about the constitutional status of the American colonies brings us to the question as to when the American Revolution began.

Here we take the point of view attributed to John Adams. Said Adams, "The revolution took place in the hearts and minds of the people a generation before the Declaration of Independence." That means the seeds of independence from England from its monarchs and Parliament were planted as early as the 1750s. We turn now to look at developments in this period with some focus on how the colonials viewed their changing relationship to England.

[16] Kettner, *American Citizenship*, 44.

Their status as **subjects** was challenged.

II. The Imperial Crisis and the Road to American Independence.

A. The Era of "Salutary Neglect." England had imperial designs by the time the American colonies were settled after 1607, and it was tied to an interest in developing nascent mercantilist economic policies. Mercantilism had been tried from time to time by European countries long before the English embraced it. The essence of this view was that government should control all trade so as to create a favorable balance in favor of the home country; this it was believed, would lead to prosperity and military security.

Although England made halting efforts to establish such policies by the middle of the 17th century—Cromwell's Navigation Acts of 1651, for example—significant innovations occurred in the 18th century. By about 1700 English trade had grown substantially with her colonies and elsewhere around the world. When Sir Robert Walpole became, in effect, England's first Prime Minister in 1721, he looked around and concluded that English trade was doing very well. In addition, England had numerous continental obligations and opportunities, including frequent wars. With these conditions the English government paid less attention to managing the colonies than it did to tending continental affairs.

With less English involvement, the colonies continued to build a flourishing trade with its attendant prosperity, trading among themselves and trading with other nations. Looking back in a speech before the House of Commons in March 1775, Edmund Burke called this a time of "salutary neglect,"[17] which, in his view was a good thing for the colonies. Burke's phrase has been used ever since to characterize this era of English imperial policy regarding her North American colonies; specifically it encompassed the time 1700 to the 1750s. A second very significant development during this period, for our purposes, was the American practice of ignoring existing English mercantile law and its practice, writing their own laws instead.

England's "salutary neglect" of her colonies came to an abrupt end in the 1750s when her

[17] "Salutary Neglect" is a term attributed to Edmund Burke in a Parliamentary debate about the American Colonies on March 22, 1775. He used the term to describe English policy towards the colonies during the first half of the 18th century. This stance, he thought, was a wise policy because the colonies prospered much more than did England itself. See James A. Henritta's *Salutary Neglect; Colonial Administration Under the Duke of New Castle* (Princeton, NJ: Princeton University Press, 1972).

continental interests resulted in war with France, traditionally called the *Seven Years War* (1757-1763). This neglect ended when England was drawn into fighting over French territorial claims in North America. Renewed military action in America revealed to Parliamentary leaders how divergent from England's imperial interests American colonial practices had become.

The result was a two-fold crisis for England. As for economic matters, she had to find ways to pay for the cost of the war itself and then pay for the new cost of administering the vast territory she gained as a result of the war. It seemed perfectly reasonable to Parliament that the colonials pay for some of the costs of war and for expenses associated with the imperial administration in North America. As we shall see, colonials objected vigorously. A second aspect of England's renewed imperialism in America resulted in numerous changes in imperial governance.

To England's surprise, the colonies strenuously objected to both the economic measures and to administrative changes advanced by Parliament. This led to heated debates between English and American politicians about the nature of the Empire and the place of American colonies in it.

It was not long before irreconcilable differences between the colonies and England arose over these questions. Colonial defense of her decades-long self-government pointed down the road to independence. Subjectship would, then, give way to "citizenship," that concept borrowed from Milton and the ancients in Rome.

B. From Salutary Neglect to Revolution: 1763-1776 and Beyond. The essential element of this period that is important for our purposes—tracing the transition from subjectship to citizenship—may be captured in two themes. One was Parliamentary enactment of numerous revenue-raising measures which infuriated colonials. Second, colonials expressed their objection to these new imperial measures by stating frequently and cogently their evolving political theory about their place in the Empire. Colonial views were, of course, sharply at odds with Britain's defense of its imperial claims.

1. Examples of new Mercantilist Policies. It's important to review some imperial enactments here briefly because they indicate what made the colonials angry, insulted and infuriated as they were. One act that angered colonials was the Proclamation of 1763. It established an imaginary line down the spine of the Appalachian Mountains and required all

colonial settlers to refrain from crossing it to settle in the West. In fact, many colonials already had settled in the West. In addition, several colonies had long claimed land as far as the Mississippi River. Parts of the western region were theirs, they said.

Other imperial measures included the American Revenue Act of 1774, popularly known as the Sugar Act. This was the first time Parliament passed an act for the sole purpose of raising revenue in America. The Currency Act of 1774 made the creation and use of colonial currency illegal. It caused dramatic deflation throughout the colonies. The Quartering Act of 1765 required all colonial governments to provide barracks and supplies for British troops—dwellings for officers and barns for foot soldiers. In the same year the Stamp Act was passed, Parliament therein levied a tax on dozens of colonial documents, including newspapers, broadsides, almanacs, all legal documents, licenses, pamphlets, and more.[18]

There were, of course, many additional Parliamentary acts that angered colonials, but the point here is that these measures galvanized opposition to Parliamentary rule and thrust forward the challenge to subjectship. As is well known, colonials objected and opposed these measures because they were passed without any representation of American views. That is, it was "taxation without representation." Colonials had long insisted that they could be taxed only when they were represented in the process.

2. The Emergence of Colonial Intellectual and Political Resistance. English justification for its authority to pass measures regulating the colonies was based on the fundamental assumption that Parliament represented the whole Empire, including the colonies. It, thus, assumed that it had power to make all laws necessary for the good of the Empire. As suggested earlier, in the ensuing years-long debate, the colonials rejected the Parliamentary position and put forth new ideas of their own. Maryland's Daniel Dulany wrote, for example, at the time the revenue-raising Stamp Act was enacted, that it might be alright for England to regulate trade but denied that Parliament had authority to impose internal taxes for revenue in as much as the colonies were not represented in Parliament. In other words, a spirit of republicanism became evident. Only colonial legislatures could impose taxes, in his view. Concurrently, this same view was vigorously stated in the Virginia House of Burgesses by Patrick Henry. It was part of his famous "treason" speech in which he also warned the king that

[18] The Acts mentioned here appear in any standard American history text and may be found by a Google scan.

he might meet the same fate as Caesar and Charles I (Charles I was beheaded in 1649). Henry asserted the proposition that Virginians had the right to regulate their internal affairs and that this right had always been recognized by the king because it was embedded in their Charters.

As is obvious already here, political and intellectual conflict between the colonies and England festered for a decade before the Declaration of Independence. England's resolve to impose total imperial control emerged early, in the Declaratory Act of 1766.[19] This act was issued the same day that the hated Stamp Act was repealed, and was, therefore, little noticed as the colonials rejoiced in the repeal. The Declaratory Act was a bold Parliamentary statement ending with the phrase that it had authority over "all colonies and colonists in every case whatsoever." A more comprehensive claim to sovereignty would be difficult to imagine. In due course, this claim sank into colonial consciousness and likely encouraged a resolve and determination among colonials that they would eventually need to separate themselves from England: A new definition of their relationship to the King and Parliament needed to be developed.

As colonials searched for ideas to defend their sense of self-government, they also grappled with the idea of allegiance—that idea that was basic to any English understanding of subjects and rulers. During the Stamp Act Congress of 1765 the colonials admitted in a Declaration that they "owed all due subordination [allegiance] to that August Body the Parliament of Great Britain." The operative word here is *due*, meaning that they, the colonials, were the judges of what was acceptable allegiance. In a phrase, subordination was not unlimited. How different this view is from that of Justice Coke and the long-standing English tradition which stated, "once a subject always a subject."

In addition, the colonials reminded their British pamphleteer opponents that duties of subjects, including allegiance, were based on the assumption that the sovereign (usually a king) provide the subjects with protection both against foreign and domestic threats, that is to say, protection against invading armies and local bandits and other criminals. It would not be long before the colonials wrote the Declaration of Independence in which they listed the "long train of

[19] The "Declaratory Act," formally titled "The American Colonies Act (March) 1766," may be found in Gale Group, *Gale Encyclopedia of U.S. History*, 2006, Gale Group Database, www.answer.com/topic/declaritor-act-1776 (accessed 12/11/12).

abuses" and failures of the king regarding his protection of them.

British writers also claimed that Parliament had authority over the colonies by virtue of the old doctrine of conquest. This meant that conquered people were under the control and authority of the conqueror. Colonials rejected this idea also, and on two grounds. One, it was an outmoded medieval idea, they said. And, they asserted again and again that they owned their land based on charters from English kings. Finally, colonials said that their rights were also rooted in the common law which Parliament could not change.

As the mood for independence grew in the early 1770s, some American writers and politicians began to quote John Locke, who stated in another fashion what John Milton and his friends had also articulated. He spoke of the "consent of the governed" as the basis of power and authority of government. This argument moved the basis of power to rule away from depending on the king or English government to protect them. It changed the basis for allegiance. Their argument now was that the king or Parliament could not expect allegiance without the voluntary consent of the colonials. When the rigid, comprehensive claims of the Declaratory Act are contrasted with the colonial view that allegiance was based on the consent of the governed, only one result seemed possible—Imperial acquiescence or war.

If the colonies severed their ties with England, what would their relationship to England be? At a personal level colonials would **no longer be subjects**. Abandoning subjectship, colonials would **see themselves as *citizens* of newly freed states**. As they would soon state in their Declaration of Independence, they would collectively have "a separate and equal station" among the nations of the earth, its citizens, "the governed by consent," forming the new relationship of "the governed" to the government of the nation.

By the mid-1770s, additional ideas touching the need for independence appeared. Some colonials cited other points Coke made in his famous *Calvin's Case* opinion to defend their position. For example, Coke stated that "every man swears allegiance for himself to his own king in his natural person." There is a subtle point here. Coke is saying that allegiance was not to the king in a political capacity, or in any of his ties to the legislature, but allegiance was due to the king's person. This echoes a parallel idea that the king's charter agreements with individuals or corporations were personal, not acts based on political or governmental power. With this in mind John Adams said, "We owe no allegiance to any crown at all. We owe allegiance to the person of

his majesty King George III . . . ."[20] Taking the same point of view, Alexander Hamilton said in 1775, "He is king of America, by virtue of a compact between us and the king of Great Britain. These colonies were planted and settled by the grants, and under the protection of English kings, who entered covenants with us for themselves . . . and it is from these covenants, that the duty of protection on their part, and the duty of allegiance on our part arose."[21] Notice that the colonials do not admit any allegiance to Parliament, and that for two reasons. One, because it was as the subjects of kings who made compacts with the original settlers, not Parliament. As stated earlier, they owed him allegiance, at that time, they said, because he was contractually obligated to provide them with protection. And second, colonials all along saw their own legislatures as empowered by "the consent of the governed" to act on their behalf for their benefit, meaning no longer *subjects* beholden to the King.

Yes, subjectship was involved. They were subjects of the kings for the reasons stated. If they were subjects of the king, there was no need or basis for a subjectship to Parliament, a point made in the *Virginia Gazette*. It stipulated, "Parliament represents the people of England, who chose them"; continuing, "it has no right of sovereignty over us; but the king has a constitutional right, and that we have always submitted to and always shall."[22] That was in 1765 at the time of the Stamp Act crisis.

Significantly, as events evolved, by 1776 the colonials were left with the question of what they could do if the king failed to provide them with protection against foreign invasion and against Parliamentary excesses. Colonials had long rejected Justice Coke's view in *Calvin's Case* that allegiance was "an immutable and perpetual obligation." As noted earlier, they saw allegiance as contractual, and following Locke, saw it as based on the "consent of the governed." In this context, John Adams could write that if the charters were annulled, the king "would not be bound to protect the people, nor . . . would the people here, who were born here, be, by any principle of common law, bound even to allegiance to the king. The connection would be broken between the Crown and the natives of this country." So wrote Adams in February 1775.

It's important to remember that these characterizations by colonials of their relationship

[20] Kettner, *American Citizenship*, 160.
[21] Kettner, *American Citizenship*, 161.
[22] Kettner, *American Citizenship*, 64.

to the Parliament and king were hammered out and articulated over several years amidst growing hostility towards the American colonies in England. This hostility led to skirmishes and then fighting. Surely these physical conflicts—Bunker Hill and Lexington and Concord for example—made the need for an argument for independence all the more urgent. A call for independence—a rejection of subjectship—was at hand.

3. The Resolve to be Free. Reflecting on the political, economic/mercantile, and intellectual matters just discussed, it is easier to see why John Adams at the time of the Declaration of Independence said that "the revolution took place in the hearts and minds of the people a generation before the Declaration of Independence." As we have indicated, colonials for a decade and more found ways to justify their objection to renewed English imperial policies. This was the revolution to which Adams referred.

Thus, after a long struggle, the resolve to be free came in the spring of 1776. At that time the first clarion call for independence appeared with the printing of Tom Paine's *Common Sense*. It was on June 7 that Richard Henry Lee offered a resolution in Congress that the United Colonies "are, and of a right ought to be free and independent states." After some debate, a committee was appointed to draft a declaration on June 11, consisting of Jefferson, Franklin, John Adams, Robert Livingston, and Roger Sherman. On July 2 the Congress debated the draft by Jefferson and made some changes. On July 4 the document was approved with 12 votes for it. New York abstained. Copies were prepared for the states and the Declaration of Independence was published and proclaimed, and read aloud on the steps of Independence Hall in Philadelphia on July 8, 1776. Colonials were no longer subjects, but what were they?

III. Citizenship in the New Nation.

A. Citizenship and the Meaning of the Declaration of Independence. The Declaration itself is a formal summary of colonial ideas and practices that had matured in the previous decade. It embodied the essence of what John Adams meant when he said the revolution took place well before the Declaration itself "in the hearts and minds of the people."

While the Declaration is brief as political documents go, it is packed with information about colonial ideas and attitudes. We note several here that lend meaning to the concept of citizenship. The first, and most significant, are three of the "Truths" that the Declaration called

"self-evident": "that all men are created equal," that "they are endowed by their Creator with certain unalienable Rights, that among these are life, liberty, and the Pursuit of Happiness," and that to secure these Rights, Governments are instituted among men, deriving "their just powers from the consent of the governed." In capsule form they said that all men are created equal, that they have certain non-negotiable rights, and that rulers can only govern when they have the consent of the citizens. It's true that each of these ideas may be found in the past, but they had never been gathered in one document and approved by a duly elected legislative body.

These are the basic rights that colonials as former subjects now stated publically as **citizens** in the new republic. The Declaration itself uses *citizen* in the 28th paragraph when it states, "He has constrained our fellow citizens taken captive on the high seas . . . ." This is a monumental change, a historic change. Nothing like it had ever existed before in history. In using *citizen* to designate their new status, the Founders were resurrecting an honored name used in republican Rome and in John Milton's republican time in England. They, however, gave it new meaning in the new world.

Most of the Declaration—perhaps 80% of it—is a list of "a long train of abuses by the King" designed, they said, "to reduce them under absolute despotism . . . ." Thus, they said, "It is their Right, it is their Duty [as citizens now], to throw off such government, and to provide new guards for their future security."

We note one more item in the "train of abuses" that the colonials saw in royal behavior. They accused the King of "obstructing the laws for naturalization of foreigners" and "refusing to encourage" migration. This issue turned out to be very important as the Founders developed the concept of citizenship. The complaint just noted indicates a difference in practice between England and the colonies when it came to accepting new members into colonial society. England had long required prospective subjects to seek approval for entry by Parliamentary acts or by meeting religious requirements such as a certification from a priest or preacher that they had taken the Lord's Supper in the last month. This practice had changed little in a century in Old England. Colonials had different ideas.

It's certain that English laws, by Charters or Parliament, had always asserted authority over colonial naturalization procedures. These were, however, largely honored in the breach, especially since the days of "salutary neglect." In fact, colonials actively relaxed rules for

naturalization and citizenship, beginning in the early days of settlements. The reason for this was the simple need for more inhabitants to occupy and settle the vast territory of America.

English and colonial differences in the matter of naturalization came into sharp relief when England's imperial interest in America was sharpened in the 1760s. The arguments that ensued generated colonial objections to the King's naturalization practices, labeled as an "abuse" in the Declaration.

Noteworthy is the fact that colonial views of naturalization often rested upon the "consent theory" of naturalization. This means that when a prospective new citizen demonstrated a desire and will to become an American citizen, that was evidence enough that he was qualified. Colonials also retained the time-honored requirement that in exchange for protection under the laws of the colony, the new citizen pledged allegiance and loyalty to it. There were, of course, variations on this among the colonies. For example, one colony might require evidence of property ownership on the theory that such ownership indicated a desire to be a permanent resident.

Reflection for a moment on the matters discussed in this section of the paper shows that the Declaration of Independence was pivotal in listing and then insuring the basic rights of ***citizens***—"all men are created equal," all have "certain unalienable rights," and all have the right to have government's just powers derived from the "consent of the governed." And, an easy path to citizenship was driven by the need for people to settle the vast regions that the new United States encompassed.

Independence, however, raised as many questions about citizenship in America as it answered. We turn now to a consideration of some of these matters.

B. Defining Citizenship in the New Nation. It was assumed at the time of the Declaration of Independence that former subjects of a particular colony were now citizens in the new state that replaced the former colony. The Declaration and the Articles of Confederation made this point. The Declaration states:

> That these United Colonies are, and of Right ought to be, **Free and Independent States**; that they are absolved from all Allegiance to the British Crown, and that all political Connection between them and the State of Great-Britain, is and ought to be totally dissolved. . . .

Notice that “States” is plural, indicating that each by itself was a sovereign entity. The Articles of Confederation (1781-1789), our first constitution, made the same point: “Each state retains its own sovereignty, freedom, and independence, and any powers, jurisdiction, and right, which is not by this Confederation expressly delegated.” The Declaration passage above also emphatically ends “all allegiance” to the British crown, allegiance being an essential element in a political relationship.

As for the Confederation, it did not last long because of serious flaws in its structure. A principal one of these was the absence of an effective central government with sufficient power to govern. By 1787 a convention assembled and was charged by the several states with making suggestions about how these flaws could be remedied. As is well known, this convention exceeded its charge and drafted an entirely new document—The Constitution of the United States of America. It was 1787. After much argument, it was adopted in 1789, with one condition, that it be amended to include a Bill of Rights. That was accomplished by 1791. In so doing, this new status, that of **citizenship**, was re-enforced. The rights in the Bill were in addition to those enumerated in the Constitution itself—including freedom of religion, freedom of the press, freedom of speech, freedom of assembly, and more.

The new Constitution did not, however, fundamentally alter existing state practices in granting citizenship. It did give Congress authority in Art. I, Sec. 8 “to establish uniform Rules of Naturalization. . . .” The logic of this seemed to be that variations in naturalization procedures carried over from colonial and Confederation experience needed to be streamlined for practical purposes.

While the Constitution did not specifically define a code for national citizenship, it did make reference to it. Consider Art. I’s comment on qualifications for the presidency. Specifically, “No person except a natural born citizen, or a citizen of the United States at the time of the Adoption of this Constitution shall be eligible to the office of President.” Further, Art. II, Sec. 2 provides that, “the citizens of each state Shall be entitled to all the privileges and Immunities of Citizens in the several States.” And, Art. IV, Sec. 4 states that “the United States shall guarantee to every state a Republican Form of Government.” Inhabitants of a republican nation are known as **citizens**—not peons or slaves or subjects.

C. Free Blacks, Citizenship, and Sovereignty: From the Revolution to the Civil War. It was clear by 1800 that the new nation left the question of citizenship to the states, except for the requirement that naturalization laws be uniform. No national citizenship had yet been clearly defined. It would not be until the adoption of the 14th Amendment in 1868.There were other issues, however, that would eventually raise questions about it.

The more significant among these was the question of the status of free blacks at the end of the Revolutionary War era.[23] There were several hundred thousand free blacks in the South and about the same number in the North at that time. What their status was became a very important question in the decades ahead. The answer to that depended on the practices of particular states and there was not much uniformity among them on this issue.

Both the North and the South had several classes of citizens and there was a tendency to lump free blacks in with one of the white sub-classes. The sub-classes included such groups as women, children, paupers, vagabonds, and others. The matter was further complicated by the fact that some free blacks had recently been slaves and some states limited their status even more, based on that fact. Further, even what rights a free black or former slave did have in a state was an important question, too. Did the "privileges and immunities" clause of Art. II, Sec. 3 in the Constitution apply to them too?

The complexity of this situation can be seen by pointing to two possible rights free blacks might have—property ownership and suffrage. By the time of the Missouri Compromise in 1820, the law books were loaded with cases involving these and ancillary issues. In sum, a few free blacks could vote by the 1780s, fewer in the South than in the North. By 1820, however, the free-black right to vote was virtually extinguished, along with full citizenship. The same pattern was true of property ownership. Conditions in the North regarding property ownership were not much better than in the South.

A few statistics will sum up and highlight the status of free blacks by 1860. There were about four million slaves in the South; a handful lived in the North as well. As we shall see, an explosive question at the time involved the status of free former slaves in a Northern state or in a

[23] Kettner, *American Citizenship*, observes on page 301, "The Revolution greatly stimulated anti-slavery sentiment, for the disparity between deeply felt ideals of individual liberty and the widespread system of bondage was too blatant to be overlooked."

territory. The Dred Scott case involved this issue. At the same time there were about 250,000 free blacks in the South and a similar number in the North. In the North a few free blacks could vote. For example, in Maine, New Hampshire, Vermont, and Rhode Island blacks could vote on the same terms as white men. Interestingly, by 1850 Illinois, Iowa, Indiana, and Oregon had passed laws to prevent migration of free blacks into their state. In many states, especially in the South, blacks could not testify against whites in criminal cases. And, most states did not allow blacks to marry whites. Limited citizenship, if citizenship at all, thus, evidenced itself.

Moreover, in the general social climate beyond the area of suffrage and property rights, whites almost universally looked down on blacks—free and slaves alike—as inferior and unfit to be citizens. Indeed, there is frequent language among Southerners that refers to blacks as "sub-human." Surprising to some today is the fact that a belief in equality between whites and blacks was virtually unknown in the North and South at the time of the Civil War. Indeed, that attitude existed in many places for decades after.

The Declaration of Independence said, among other things, that "all men are created equal. . . ." Obviously, this did not apply to blacks in the minds of many at the time of the Civil War. It was not in the thinking of Abraham Lincoln either. Declared Lincoln in an August 1858 debate with Judge Douglas:

> I have no purpose to introduce political and social equality between the white and black races. . . . I am in favor of the race to which I belong having the superior position. Free them (slaves) and make them political and social equals? My own feeling will not admit of this. We cannot, then, make them equal.[24]

The sum of the matter concerning free blacks and citizenship is clear. Citizenship as held by whites from the Revolution to the Civil War was almost non-existent for free blacks. Such citizenship as free blacks held in a few states was a second or third class citizenship. And, such rights as free blacks had in 1790 all but vanished by 1860.

This deterioration of the status of free blacks was deeply affected by the question whether slavery should be extended to the new states and territories. Most of these states were carved out of the Louisiana Purchase. The South, along with a desire to allow slavery in new states and

[24] Lincoln-Douglas Debates of 1858 were a series of seven debates in seven different towns in Illinois. The phrase quoted is from the debate in Charleston, Illinois on September 18, 1858.

territories in the southern portion of the Purchase, was also deeply interested, indeed, deeply troubled by a shifting balance of power in Washington in favor of an expanding northern industrial region. At the same time, the West was growing more rapidly than the South. In the face of these changes, the South feared a loss of influence in the nation generally and especially a loss of voting power in the Congress. Furthermore, abolitionists were growing in number and challenging Southern social and political practices.

To Southerners, it seemed natural under these circumstances to re-assert their claim of sovereignty which they believed they held from the days of the Confederation in the 1780s. In their minds, the creation of the Federal Constitution did not extinguish state sovereignty. Did not the Ninth and Tenth Amendments insure the validity of their view?

It's true that the Federal Constitution in Article VI made a sweeping claim to power that could be defended as a claim of national sovereignty. Stated the Article:

> This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the Supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Yet, many Southerners assumed that a claim to national sovereignty, as this Article seems to make, did not suppress or abolish state sovereignty. From this point of view, it could be argued that Americans enjoyed dual sovereignty.

If sovereignty is defined as "a monopoly of the power of the sword over people and territory," there cannot be two sovereign entities in the same place at the same time. One might, of course, claim the existence of a "limited sovereignty," but that begs the question.

American political life was dominated by this dilemma from at least 1820—the time of the Missouri Compromise—to the opening of the Civil War. The question of sovereignty was to be settled by the sword, beginning in 1860.

The fortunes of black citizenship, at a very low ebb as war came, were intimately tied to the resolution of the sovereignty question. This resolution came only after a bloody war and a time of reconstruction, that is, by 1870. Only then were state and national citizenships fully defined, though not fully implemented for decades.

That state citizenship was normative in the lives of Americans is well illustrated by a famous exchange of views on the subject between President Lincoln and Robert E. Lee. Lee, born and raised in Virginia, a graduate of West Point with a distinguished 32 year career in the United States Army, was asked by Lincoln in 1861 if he would command Union forces, surely a great honor. Realizing that some states desired to withdraw from the Union, Lee replied, "I am a son of Virginia as Virginia goes, so go I."

In short, his voluntary loyalty and allegiance, those fundamental elements of citizenship with deep roots in the American experience, were tied to his native state, Virginia. In this he echoed the sentiments of the vast majority of Americans. National citizenship would soon be technically defined by statutes and Amendments to the Constitution, but national citizenship as an emotional condition would be decades in coming for most Americans.

IV. Citizenship in the Civil War Era.

A. Citizenship in the Tumultuous 1850s. Though the Civil War began in 1860, it was a likely possibility in 1850. Historians generally agree that the Compromise of 1850, a series of statutes that placated Southern interest in slavery and a Northern desire to prevent the spread of slavery into new states and territories, postponed a civil war at that time. The Mexican-American War (1846-1848) made these issues especially urgent. Kentucky's Senator Henry Clay and Illinois' Senator Douglas were the principal actors in reaching this compromise.

While the compromise staved off war for a few years, tension between the North and South continued and was heightened by two additional crises in the next few years—the Kansas-Nebraska Act of 1854 and the Supreme Court Dred Scott Decision of 1857.[25] The former opened up more land for settlement, much desired by railroad interests for a transcontinental railroad. The question of black citizenship, then, was an issue in Kansas because the place of blacks as slaves or free men was to be settled by local e.g., territorial voting, called "popular sovereignty."

The Dred Scott Decision is significant, interesting, and complex, especially to students of the law. Its pertinent features may be summed up briefly as follows. Scott was born a slave in Virginia some time before 1800, bought and sold several times, and then moved from a slave state to several free states and territories. While in a free state it appeared that he could have

[25] *Scott v Sanford*, 60 US 393 (1857).

obtained his freedom. He did not. By 1846, Scott did seek freedom in several lawsuits and failed. His case eventually wound up in the United States Supreme Court. Several issues were addressed at that time, but the important one for our purposes was whether Scott was a citizen of a state, and thus, had standing to sue. Chief Justice Taney wrote the majority opinion in which he concluded that Scott was not a citizen of a state, and therefore, had no standing to sue on the theory of diversity of citizenship; that is, the citizen of one state had a constitutional right to sue the citizen of another state.

One effect of this case was to encourage Southern states to seek further advancement of slavery into new territories. Another effect was to spur on the growing abolitionist movement in the North. Recent studies suggest another result of the Scott decision, namely, that it brought about an economic crisis—bond prices collapsed, banks failed, and the Depression of 1857 came. The decision was also a prominent feature in the famous Lincoln-Douglas debates of 1858. Not to be lost in these developments was the fact that the question of black citizenship suffered a serious setback.

The tumultuous 1850s, marked by the events just discussed, pointed towards the coming of a civil war. As the 1860 election neared, the Democrat Party was split—one wing in the South and the other in the North. Meanwhile, the Republican Party rapidly gained power and influence in the North. Threats of secession in the South grew.

The election was between four main candidates: Senator Douglas, Northern Democrat candidate; Kentucky's Benjamin Breckinridge, a Southern Democrat; Tennessee's John Bell; the Constitutional Union Party's candidate. Abraham Lincoln, also of Illinois, was the Republican candidate. The vote was divided as follows: Lincoln 39.8 %, Douglas 29.5%, Breckinridge 18.1% and Bell 12.6%. Before Lincoln was inaugurated, seven Southern states seceded and formed the Confederate States of America, modeled largely on the original Confederation's Constitution of 1781. Four more states seceded when President Lincoln called for the restoration of federal property in the South. Then, Fort Sumter, a Union facility in Charleston harbor, was shelled. The war came. Citizenship in general, and black citizenship in particular, would be defined as a result of the war.

B. The Significance of Military Service by Black Americans. Free blacks had served in America's earlier wars, and many of them served in the Civil War. But, in time, their service

in earlier wars became a fog in the memory of the American public as the question of black citizenship became more problematic. War Department regulations in the 1820s—a time when the question of slavery's extension into new states and territories was heating up—excluded blacks from military service, and thus, they were forbidden to fulfill their citizenship responsibilities. Most state militias, the more significant source of military service at that time, took the same point of view. An exception to this pattern was in the naval service. Thousands of blacks did serve in the navy in the 1820s.

The 1850s saw a big push in black communities across the North, especially in New England, for participation in military service.[26] For example, in 1852 William J. Walkins attempted to obtain a charter from the Massachusetts legislature for a black militia company in Boston. After a respectful hearing, his request was denied. Three years later blacks formed the unauthorized Massasoit Guard. Other black groups followed suit in other Northern states.

The looming war between the states in 1860 heightened the interest of blacks in serving in the military. In the big cities of the North numerous efforts were made to form black regiments, Philadelphia's *Herculean Defenders* and Pittsburgh's *Hannibal Guards*[27] being leading examples. Few whites, however, were enthused by the prospect of black soldiers defending "white America." A typical remark about this issue, and evidence of incipient racism generally, was made by a Cincinnati police officer when he said, "We want you damned Niggers to keep out of this; this is a white man's war."

As the war efforts looked grim by 1862, a renewed interest in using blacks as soldiers emerged. Specifically in July 1862 statutes were passed by Congress aimed at making naturalization much easier for Irish immigrants especially. This change also opened the military door to blacks. There was much debate and acrimony over this issue. The debate showed that most whites believed that "the law of caste is the law of God. . . . whites and blacks will always be separate," and that "the one will always be inferior to the other."[28]

In the wake of this Congressional measure, black military units began to be formed. For example, in July 1862 the First Kansas Colored Infantry was formed and it went into service in

[26] Christian G Samito, *Becoming American Under Fire* [short title] (Ithaca: Cornell University Press, 2009), 218.
[27] Samito, *Under Fire*, 35.
[28] Samito, *Under Fire*, 35.

January 1863. Many black leaders, including Frederick Douglas, urged blacks to join military units. It is, he said, “the speediest way to elevate us to manhood and equal rights.” Here we see the real motivation of black men to find a way to gain the rights of citizenship. By the end of the war, more than 178,000 blacks served in the Union army. Probably as many as 140,000 were former slaves. Many states sent their own units, some all white, some all black, and some of mixed races.

Late in the war, many whites accepted the value of black units and individual black soldiers, some even being singled out for outstanding valor. That did not, of course, mean that white soldiers thought of black soldiers as their equals. On the contrary, as noted above, even President Lincoln did not make that assumption. Nevertheless, in the end black military contributions to the war helped improve the chances that blacks might eventually enjoy all the rights of citizenship.

C. Lincoln’s Attitude and Policies. Secession prompted both President Lincoln and Congress to act, slowly at first and then with great speed and vigor. Their collective goal was to preserve the Union, end slavery, and then define citizenship. We look at Lincoln’s attitude and policies and then turn to an extended discussion of Congressional action.

As the war came, Lincoln’s main concern was to preserve the Union. As for slavery, Lincoln’s view evolved. Early on he thought slavery would eventually disappear under the weight of its own economic inefficiencies. And during the 1850s he did not want to see slavery extended to the new territories. Political realities changed and Lincoln changed with them in the months after he took office, it appears. Importantly, abolitionist sentiment was growing in the North and this put pressure on Lincoln as well.

Lincoln issued the First Confiscation Act, which authorized the government to take Southern property, including slaves since they were considered at law to be property. Then, several generals on their own authority freed slaves in their jurisdiction. Lincoln insisted on a revocation of these measures. In July 1862 Congress passed the Second Confiscation Act, which freed former slaves who came into Union-controlled areas.

Within a week Lincoln presented a draft proposal of an emancipation order to his cabinet. After careful planning with an eye on military developments, the famous Emancipation Proclamation of 1863 was issued in January. This was a military measure issued by Lincoln as

the commander-in-chief. Whether Lincoln did this as a political expedient or as a result of changing convictions is not clear. He did think it would help end the war sooner.

The Proclamation did not free all slaves everywhere in the United States. That would come soon by Congressional action. The Proclamation, on the other hand, energized Congress' desire to end slavery, suppress Southern claims to state sovereignty, and define citizenship—both state and national.

D. Citizenship Defined by Congressional Statutes and Constitutional Amendments. Congress recognized that the Emancipation Proclamation was basically a military act by the commander-in-chief and that it was limited in scope and power. Further, once military action ended, there was some question whether the Proclamation would have the force of law. Hence, Congress decided to enact legislation and propose a constitutional amendment that would insure that slavery ended absolutely.

1. The XIII Amendment. Early in 1864 Congress proposed the 13th Amendment to the Constitution, and of course, it would be easy to pass and be approved, since eleven Southern states were not part of the process. The Amendment's text read:

> Sec. I. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States or any place subject to their jurisdiction.

A second section in the Amendment gave Congress authority to enforce Section I. Congress' intention was clear. Slavery was to end in the United States in every jurisdiction whatsoever!

As an interjection, it is worth noting that the Congressional drafters—none were from Southern states with a "state's rights" bias—referred to the United States in the plural, i.e., "their" jurisdiction. This suggests that the idea of individual state sovereignty was still strong throughout the whole nation.

2. The Civil Rights Act of 1866. As the 13th Amendment was being ratified, Congress passed the Civil Rights Act of 1866, at first vetoed by President Johnson and subsequently passed with a vote that overrode Johnson's veto. The operative phrase for our purposes is that **"all people born. . . . in the United States** are entitled to be citizens, without regard to previous conditions of slavery or involuntary servitude." Notice the weak language here: "are entitled" has an element of uncertainty to it when compared to the 14th Amendment's "All persons born or

naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside." The amendment also stated that any citizen had the same rights as a white citizen to come before courts of law, enforce contracts, sue, give testimony, marry, and additional items.

The scope of Congressional power was not as clear then as it was a generation or two later, this limitation likely being the residue of a strong states' rights tradition and the actual practices of the original American Confederation of states from 1781 to1789. As we shall soon see, Congress was motivated to draft the XIV Amendment. Before observing the development of that amendment, which took several years, we look at two other matters that deeply affected the citizenship issue.

3. Black Codes. In reaction to the Civil Rights of 1866 and the 13th Amendment, Southern states enacted state laws which sought to circumvent the intent of those documents. They are known as the Black Codes,[29] not to be confused with numerous other Southern statutes, informally referred to as black codes, written intermittently in the 1830s and 1840s. While the effect of the Black Codes was to deny citizenship and its privileges, their initial purpose was economic. Since the 13th Amendment ended slavery, Southerners were immediately faced with the challenge of finding laborers as blacks left plantations, or at least, were free to leave them. The range and content of these Codes would be shocking to most 21st-century Americans. An example here will show the viciousness and cruelty of some former slave owners. The Codes often required former slaves to sign one year labor contracts. If a contract laborer failed to perform or walked away, he was subject by law to arrest and imprisonment. Once sentenced—usually in a haphazard way without much of a paper record—he could be, and most often was hired out, and most of the time actually leased out for a year by the sheriff to the highest bidder. In 19th-century southern America this was a common practice called "peonage labor," reflecting medieval feudal attitudes similar to that of slavery, hardly the condition of citizens. Many other elements of the Codes were onerous as well. For example, blacks could not own fire arms, buy liquor, vote, serve on juries, join a militia, and more. It does not take much imagination to conclude that the "being entitled to citizenship" clause in the Civil Rights Act of 1866 did not create citizenship for most blacks in fact.

[29] Samito, *Under Fire*, 151-152.

4. The Reconstruction Acts of 1867.[30] The elections of 1866 returned a large Republican majority to Congress. Its mood was vengeful and it worked to force Southern compliance with its desire to remake the South as a social/political mirror of the North, including race relations. Its first move to achieve these goals was the passage of the Reconstruction Acts of 1867, a series of four statutes. The Acts' precise title displays Congress' mood: "An Act to Provide for More Effective Government of the Rebel States." The significance of these measures is indicated by the fact that all the statutes' requirements had to be fulfilled before a "rebel" state could be re-admitted. Tennessee was an exception because it already had been re-admitted. A principal feature of these measures was the division of the South into five military districts, each ruled by a high level Union general with wide authority over military and civil affairs. Further, each state was to write a new constitution and have it approved by Congress. Ratification of the newly created 14th Amendment was also required. These Acts were in force until Reconstruction ended in 1877.

5. The XIV and XV Amendments. Congress was well aware that most of its earlier statutes and the 13th Amendment were not substantially honored in most of the Southern states. Further, they knew that the Black Codes were aimed at undermining citizenship rights of blacks. In this context they drafted the 14th Amendment. It included numerous clauses that were aimed at restructuring the governments of Southern states and punishing those who lead these states during the rebellion. For our purposes we emphasize here the citizenship clause of the 14th Amendment.[31] For emphasis, this clause needs to be re-stated here. Sec. I states: "**All persons born and naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside**."

In this we see for the first time in American history a full definition and guarantee of citizenship. Following this definitive statement are additional crucial clauses that explain and expand on the meaning of citizenship, including a guarantee of "privileges and immunities"

[30] It's important to emphasize that the full strength of Congress' resolve to restructure the South was embodied in a series of statutes and amendments to the Constitution. If these acts are mentioned and thought of as separate events, the full weight of their intent is lost.

[31] See Polly J. Price, "Natural Law and Birthright citizenship in *Calvin's Case* 1608," *Yale University Journal of Law and Humanities*, 9:24; she observes that "Coke's report of this case was one of the most important English common-law decisions adopted by courts in the early history of the United States. Rules of citizenship. . .from this case became the basis of the first clause (about citizenship) of the 14th Amendment."

found in Article IV, Sec 2 of the Constitution itself. It also guarantees two additional fundamental legal principles that is, "due process" and "equal protection of the laws."

Additional sections of the Amendment provide procedural measures touching representation in Southern elections and placed limits on those who served the Confederate government and military. Moreover, Confederate debt was repudiated while debt incurred in aid of the Union was not to be questioned.

It is important to note that the citizenship clause turned out to be the bedrock of citizenship rights for blacks, though that state of affairs did not occur for a long time. In addition, black voting rights were virtually non-existent as a result of the Black Codes. The Reconstruction Acts of 1867 were enacted to require states to provide voting rights for blacks. That requirement was ineffective and so Congress drafted the XV Amendment which was ratified in 1870. It was brief and to the point: "**The rights of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude**." It also gave Congress authority to implement the amendment's requirements. Notice that the amendment prevented any state from blocking the right to vote for only three reasons—"race, color, and previous condition of servitude." It did not take long for Southern states to find other ways to again circumvent these voting rights. Indeed, as we shall see, most other citizenship rights of blacks were also limited or extinguished.

6. The Civil Rights Act of 1875 and Civil Rights Cases of 1883. At the same time as the 15th Amendment was ratified (1870), Congress was busy drafting additional legislation which would guarantee black citizens equal rights in public accommodations, public transportation, and also prohibit the exclusion of blacks from jury service. It took four more years for this statute to be passed by Congress and signed into law by President Grant. This statute, commonly referred to as the Civil Rights Act of 1875, significantly, was overturned by the Supreme Court in its Civil Rights Cases (1883). The decision's crucial part stated that the Equal Protection clause of the 14th Amendment prohibited discrimination by the states but did not empower the federal government to prohibit discrimination by individuals.

Obviously, in light of the Civil War Amendments to the Constitution, blacks were legally citizens. It must be observed, however, that most Southerners saw this as a mere technical matter, since they soon sought ways to overturn the statutes and amendments.

7. The End of Reconstruction. The harshness of Reconstruction by Congress and the hatred and bitterness of Southerners towards its programs suggest that it became a social and political war instead of a military one. Reconstruction did come to a formal end as a result of the elections of 1876. Congressional efforts to control and reform the South seemed to lose focus and energy early in the 1870s, or so most historians think.

The Presidential election of 1876[32] ended up as a close contest between New York Democrat Samuel Tilden and Ohio Republican Rutherford Hayes. Tilden had 4,284,020 popular votes to Hayes 4,036,572. Tilden also had 184 electoral votes to Hayes'165. Twenty electoral votes from Louisiana, Florida, and South Carolina were disputed and threw a resolution of the election into the House. The House appointed a committee of fifteen–seven Democrats and seven Republicans, with the fifteenth member of the committee, Supreme Court Justice Bradley. After much argument the committee agreed that Reconstruction would end and all troops and other Union agents would be withdrawn from the South. In exchange for this, Hayes was declared the winner of the Presidential election, just a few days before a new president was to be inaugurated.

A period of amicable relations between some whites and the black community ensued for a brief time. Large numbers of blacks voted in most Southern states. As noted above, many held public office, even a few seats in Congress. These arrangements were due in part to the fact, not realized by most in the North even today, that the South was not a land of segregation in the colonial period, nor at any time up through the 1880s. Whites and blacks lived in close proximity through necessity and tradition. Children of each race played together, ate together, and white children were often fed at the breast of a black mother. Again, it is important to emphasize that this did not mean that whites thought of blacks as their equals. To the contrary, as mentioned before, whites all thought of blacks as inferior and certainly not their equals.

Within a decade after the end of Reconstruction a new phase of Southern history was beginning, one which is best described as a revolution. Black citizenship, which had included some voting and other rights for a decade or so, was about to end. Jim Crow would soon arrive and change the South and black citizenship for most of a hundred years.

[32] The resolution of the disputed outcome of voting in the election of 1876 became the basis for the end to Reconstruction. Accounts of it are founds in texts and data base searches.

V. Jim Crow's Strange Career and the Suppression of Black Citizenship: 1890-1965.

A. The Arrival and Practice of Jim Crow. One book more than any other has changed America's understanding of Southern history—C. Van Woodward's *The Strange Career of Jim Crow*,[33] first published in 1955, up-dated in 1957, revised in 1966 and 1974. A commemorative edition appeared in 2002 which included an "Afterword" about the book's significance. Jim Crow refers to segregation laws that severely restricted black rights in the American South. Van Woodward's special contribution to understanding Southern history is his uncovering the fact that segregation laws and practices appeared very late in the South's history, beginning in about 1890 and continuing until the Voting Rights and Civil Rights Acts of the mid-1960s.

Before, historians had always assumed that segregation had existed in the South from early colonial days. This view was re-enforced by Southerners' writing the region's history for several generations.[34] Southern historians and literary people argued that the South was the only region in America that had enjoyed a steady, long, uniform, and unbroken history. One exception was that time when the Yankees came down and disrupted their placid society in the middle of the 19th century and insisted that slavery be ended and replaced with a whole new legal system.

Part of Van Woodward's argument is that "the people of the South should be the last Americans to expect indefinite continuity of their institutions and social arrangements."[35] The South had many breaks and hiatuses, he observed, and these "go by the names of slavery and secession, independence and defeat, emancipation and reconstruction, redemption and reunion." The largest stretch of continuity in Southern history was not deep in the past; it was, rather, one called "Redemption" which began with the end of Reconstruction in 1877 and came into full flower by 1890. In making these observations, Van Woodward was laying the groundwork for his major point, that is, that the longest stretch of Southern history lasted from 1890 to the mid-1960s and was totally dominated by the Jim Crow system of segregation.[36]

Jim Crow was not only the physical separation of races, which had not existed before

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[33] C. Van Woodward, *The Strange Career of Jim Crow: A Commemorative Edition* (Oxford: Oxford University Press, 2002). Few books alter the way a phase of history is understood. This book was one of them. It deserves a wider reading than it seems to have had.
[34] Paul M. Gaston, *The New South's Creed: A Study in Southern Mythology* (New York: Alfred A. Knopf, 1970). This book complements and expands on themes in Van Woodward's book.
[35] Van Woodward, *Strange Career,* 3.
[36] Van Woodward, *Strange Career,* 5.

1890 in the South; it was a way to finally put blacks back in their "place" in Southern society. Stated another way, Jim Crow institutionalized the Southern belief that blacks were inferior, of limited ability, and good for little more that hard physical labor—not worthy of the same citizenship rights whites enjoyed.

Space permits only a few examples of how Jim Crow worked. It's true that some blacks did vote for a time before 1890, a time when the South's "Redeemers" were cobbling together a "New South." Van Woodward notes that it is absolutely remarkable how rapidly Jim Crow was implemented after 1890. In places in two election cycles as many as 90% of blacks who had voted two to four years earlier were now disenfranchised. This was accomplished by the passage of new statutes and then new state constitutions—all eleven Southern States wrote new constitutions by 1910. Typically, the new voting statutes required voters to pass a test on the meaning of the Constitution. Later, poll taxes were required. Most blacks could not read, nor were they educated enough to explain the Constitution; thus, they failed voting requirements. Of course, many poor, uneducated whites were no better equipped than blacks to qualify. The law, however, made an exception for them. It said that if your grandfather voted back in1860, that was proof that you were qualified to vote, too, hence the phrase "grandfather clause."

By the 1890s the "separate but equal" doctrine dominated a wide variety of political, social, and economic practices in the South. Obviously this facilitated putting blacks in their "place" and facilitated segregation's further development. Thus, there were separate eating, drinking, sleeping, and transportation places for blacks. Significantly, this system was approved by the Supreme Court of the United States in the famous Plessy v. Ferguson case of 1896. More segregation and more severe punishment for violations of laws by blacks appeared on the statute books. Especially prominent examples of such statutes were vagrancy laws. These laws gave police and sheriffs broad authority to stop virtually any black walking down the road to inquire whether he had a place to live or had work. If not, he would be arrested, jailed, and fined, all without the benefit of a lawyer or other help. Notably, these practices continued well past World War II.

Separate but equal laws and vagrancy statutes severely circumscribed constitutionally protected rights of blacks. Their 14th Amendment citizenship rights were also sharply circumscribed by these Jim Crow measures. It seems clear that the result was either a second

class citizenship or a citizenship that was hollowed out to the point that it had no substance. Actually, we now know that the Jim Crow system was much more onerous, truly immoral. That is evident in recent studies which have explored Woodward's themes further.

B. The Re-Enslavement of Black Americans: 1890 to the 1960s. This phrase is the sub-title of Douglas Blackmon's *Slavery by Another Name* (2009).[37] Blackmon documents in great detail the truly horrific conditions that uncountable numbers of blacks endured in the New South's segregated economic system, especially after 1900. Actually, tens of thousands of blacks did not endure in this system; they died, often by outright murder or by being beaten to death for minimal failures required by their owners. Others simply starved to death. Blackmon describes these slave conditions, which had matured on cotton plantations and in factories of the newly emerging industrial South. Blackmon was a *Wall Street Journal* Bureau Chief in Atlanta while doing research and writing this book. His credentials for understanding the South also include birth in the Mississippi Delta as well as other pieces written on economics in the South.

Blackmon's thesis is that blacks were not only segregated after 1890, many were re-enslaved and brutally treated in very large numbers for a very long time.[38] One result was, of course, that blacks lost whatever semblance of freedom and citizenship they may have had, or that was theirs by virtue of the 14th Amendment. Blackmon's focus is on three industries that revived Southern economic prospects after1900—cotton plantations (Mississippi), steel production (Alabama), and timber milling (Georgia). We focus on Mississippi as representative of practices in each industry.

The horrors of Southern labor practices in these industries may be shown by a brief description of how blacks were brought into the system and then how they were treated once "re-enslaved," to use Blackmon's phrase. The regions of Mississippi, Alabama, and Georgia that were dominated by this new labor system were on the frontier settlement of the South. By the

[37] Douglas A. Blackmon, *Slavery by Another Name: The Re-Enslavement of Black Americans From the Civil War to World War II* (New York: Anchor, 2009). Readers of Blackmon's book will be astonished by the range and scope of suppression of black rights recounted in this book. For that reason, we include here a quotation from Blackmon, p. 10, in which he sums up his use of information: "Every incident in this book is true. Each character was a real person. Every direct quotation comes from a sworn statement or a record documented at the time. I try to tell the story of many places and states and the reality of what happened to millions of people."

[38] I want to emphasize the fact that it has been impossible to convey in a brief section of an essay like this the true magnitude of the re-enslavement that Blackmon documents here, especially its continuous brutality and also for how many decades this system continued. I urge readers to buy the book and see this for themselves. Some will likely not have the fortitude to read the whole story.

1880s frontier Mississippi was being cleared for the further development of cotton plantations as a result of growing markets. As for Alabama, coal, iron ore, and limestone had been discovered several decades before the Civil War in the Birmingham area. The war placed a great demand on steel made there for use by the Confederate army and navy. Civil War battles all but destroyed the steel plants, but enterprising Southerners began to repair, replace, and expand steel production in the area. Discovery of additional raw materials close by made additional production economical. Fundamental to the growth in both cotton and steel production was a need for a huge labor force.

The developers of these new cotton plantations and steel mills were not the sons of the South's pre-war gentlemen entrepreneurs. They were, rather, members of the eastern South's poorer class of whites who headed west to seek their fortunes. By the time these fortune seekers arrived in Mississippi and Alabama in the 1880s, the re-enslavement of blacks was under way on a small scale compared to what the new arrivals would develop in time.

In a sense it is accurate to say that slavery never ended in the backwaters of the Old South. As noted before, Congressional statutory and Constitutional measures that freed black slaves created labor problems for both their former owners and for the slaves themselves. The slavers had an immediate need for labor when, and if, the freed slaves left. Blacks, on the other hand, did not have experience with labor for pay; how much should a laborer be paid, for example. Many former slaves throughout the whole South did stay on and work for their former owners or go to work for someone else a few miles away. It did not take long for savvy whites to learn that they could take advantage of the confused and ignorant former slaves. Some, having no alternatives, ended up working for wages, but at rates that were unconscionable. In the Mississippi and Alabama frontier area that Blackmon discusses at length, re-enslavement of blacks became a way of life with a vengeance, the basis of these new systems for cotton and steel production. Over a forty to fifty year period as many as a million or more were sucked into this system.

The principal purpose by this new class of slavers was naturally, as noted, to obtain black laborers. The secondary effect of this process disrupted social, cultural, and psychological aspects of black workers' lives. And as indicated, the physical effects on blacks was an abomination. We look now at the enslaving process and then at the way the victims were treated.

In some sections of the South, blacks outnumbered whites as much as ten to one. This was

true in the cotton and steel regions being discussed here. This means that at any time in towns, along roads, in railroad right-a-ways and virtually everywhere else, many blacks were present. The new settlers from the East soon realized that existing state laws in their area allowed them to procure blacks for work by abusing the law. Given an underlying dislike of blacks by whites—especially low class whites—and with a conviction that it was God's plan that blacks were made to work for white men, there was no opposition to forcing blacks to work for whites on their plantations and in the steel industry.

Here is how the system worked as documented by Blackmon's study. John Pace cleared and accumulated vast tracks of land and turned them into cotton plantations.[39] He eventually had other businesses, too. He had contracts with the state and informal agreements with a number of local law enforcement officials. The state contracted with Pace for convicts to work for a specified time and fee. These contracts could be renewed for flimsy reasons, just as they could be with private slave dealers. The convicts were housed in large dorms—Pace had hundreds of convicts working for him at any time. In addition, and more important in the long run, were the workers procured by the local governmental officials, often called constables or deputy sheriffs. The point is that each of these people had authority to stop any of the hundreds of blacks that might cross their path on any given day and inquire whether they had any money, work, or a place to live. If not, they were charged with vagrancy and taken to a local jail, or its equivalent. After a summary trial by a Justice of the Peace, the blacks were convicted and fined. About that time an agent of John Pace would show up and offer to pay the fine and then offered the black victim—we will call him James—an opportunity to work off the fine that was just paid on his behalf. The alternative might be a beating by the constable. In great fear James would sign the contract with an "X." He, of course, could not read or write, and thus, did not know what he had just agreed to. Pace's agent probably paid the constable fifty dollars or less. There was likely no written record of this arrest, trial, and conviction. There might have been a semblance of a written contract with private slave dealers, handy if authorities happened to come around.

[39] John Pace was a real person, not a composite character. Blackmon was able to find extensive records about who he was and about the extent of his slave holding. His brutality, by himself and by his slave-masters, was hideous.

Pace's agent would gather up several more blacks the same way. Before he placed these men in his wagon, he likely contacted other dealers who bought and sold blacks. With his wagon full of black men he went to one of Pace's plantations. On arrival, the blacks were given a brief lecture about "house rules" which basically meant "do what my men tell you for the nine months you will be here or you will be beaten and whipped." Soon James and the others were out in the fields (or mines), joining hundreds of other re-enslaved blacks, planting, or picking, or hoeing cotton, from dawn to dusk six days a week. Food was gruel. Sleep was on the floor of a dorm-type structure or in a stockade. Feet were bare or covered with rags. Clothes were too thin for the cold of fall and winter.

And then there were the beatings, many beatings for no rational reason. Every day many of these peonage blacks were given 20, 30, or more lashes. Others were tied to a pole and laid on the ground in the sun for hours. Open wounds festered with infections, sometimes leading to death. Bare feet seldom healed up fully. Younger, weaker field hands were candidates for sexual abuse by stronger males.

When a black's "contract" for nine, or twelve, or whatever number of months was up, Pace's men would bring another trumped up charge against him. He would dutifully be found guilty and fined by Pace's friendly Justice of the Peace, and returned to the fields to work off his new debt. Sometimes blacks were charged for food and shelter, but whatever they might be paid—once a year—was never enough to fully pay off his debt. So, he worked some more.

Pace's agents routinely also bought, or "leased," young black women who were taken to the plantations for the purpose of servicing Pace family men and numbers of Pace's guards and overseers. The result, of course, was a steady pattern of new children, many of whom eventually were sent to the fields, or if females, worked in the house. Many were also sold to neighbors or transient slave traders. Family life for blacks under these conditions was not a likely option. Of course, the Pace men convinced themselves that these young black females enjoyed their company. This way they might ignore their consciences as they sat in church each Sunday.

For emphasis, we note here that it could not be more obvious that these blacks under Pace's control had no rights at all. Indeed, the idea of citizenship—promised in the 14th Amendment to all—did not exist for the hundreds of thousands of re-enslaved blacks like those

thousands who worked on Pace's many plantations. And, these conditions existed for decades on cotton plantations and in the iron, coal, and limestone mines in the Black Belt South. Some statistics make the picture graphic. Writing about the 1930s, Pulitzer Prize winning Blackmon states that "across the South, despite claimed reforms in many states, more prisoners than ever were pressed into compelled labor for private contractors—but now almost entirely through local customs and informal arrangements in city and county courts." He also notes that "in Alabama in 1927, 37,701 black men were arrested for misdemeanor charges and subject to sale by the County Sheriff."

He also observed that of the nearly five million blacks who lived in the Black Belt in 1930, the great majority were likely trapped in involuntary servitude. This was in absolute contradiction of the 13th Amendments language, which said: "Neither slavery not involuntary servitude. . .shall exist in the United States, or in places subject to their jurisdiction." In other words, the re-enslavement that Blackmon documented did not involve only several thousand blacks that worked for a John Pace or one of his friends. Millions across a wide region were ruled by the re-enslavement system. To emphasize a main point we wish to make, this system made a mockery of black citizenship and the rights that it provided.

C. The End of Re-Enslavement and Gradual Restoration of Black Citizenship. Blackmon focused on the end of WWII as a time when conditions began to improve for blacks in the South. We recite some of his points briefly here and add several other factors that helped restore citizenship to black Americans. WWII itself opened the door to blacks, just as America's earlier wars had done. The Great Depression and the War's need for factory labor began what has been called The Great Migration, referring to the millions of blacks who left the South in the 1930s and 1940s and after, moving to the big cities of the North where there was work at good wages—to Detroit, Cleveland, Pittsburgh, Chicago, and others.

Blacks were much freer in these cities, though the cities had their codes that tended to segregate blacks by neighborhoods. Eventually, the Civil Rights Movement in the wake of the Supreme Court's *Brown v. the Board of Education of Topeka* (1954) began a process that after

fifteen years had produced the Civil Rights Act (1964)[40] and the Voting Rights Act (1965).[41] In addition, the Congress passed numerous pieces of enabling legislation which assisted the development of equal opportunity for blacks in the workplace. There was continued Southern resistance to all of these measures, but eventually a New South emerged that was more accepting of black citizens. Probably the best measure of the degree to which black citizenship rights have been restored is in the high percentage of blacks who now vote.

It can now be truly said that citizenship rights that belonged almost exclusively to whites in America throughout much of its history now also belong to all black Americans as well.

[40] For a good account of how the Southern system came to an end, at least an account of how it began to come to an end, may be found in Chandler Davidson, *Quiet Revolution in the South: The Impact of the Voting Rights Act, 1965-1990* (Princeton: Princeton University Press, 1994).

[41] See Charles Whaled and Barbara Whaled, *The Longest Debate: A Legislative History of the 1964 Civil Rights Act* (Cabin John, MD: Seven Locks, 1985).

A Postscript on Citizenship in America

It became evident in the course of research for this paper that the scope of citizenship is very large; thus, this paper's focus has been limited. Other papers have raised the questions about American citizenship's future, and some of them have focused on the radical nature of the Progressive/Obamian view of society. In view of this, it became obvious that an important, even crucial point, could be made at the end of this paper. It is this: **The effect of the Progressive/Obamian government programs is making American citizens into *subjects*, just like Americans were before the Founder's Revolution in 1776.**

Recall briefly the facts of that era, a time we called the "Imperial Crisis." England rapidly expanded programs to control and regulate the colonies. Some of these programs were aimed at literally controlling the physical movement of colonials, e.g., The Proclamation of 1763, which prevented colonials from settling across the Appalachian Mountains. Many others were aimed at raising revenue because of an imperial "emergency." And, what was the emergency? It had two main features: One was the rising cost of operating an expanded government administration; the other, the cost and debt generated by fighting a number of wars, especially the big one—fighting France for control of North America. Recall the Hat Act, Sugar Act, Glass Act, Stamp Act, and a dozen more. These were the emergency measures needed to raise revenue and taxes.

When colonials objected to these measures, England stated in the Declaratory Act that she "had all power over all colonies and colonists in every case whatsoever." In view of the policy changes aimed at raising revenue and controlling colonials' movement, colonial leaders protested. They wrote broadsides, pamphlets, and formal protests to the English government. Then they boycotted buying British goods—especially tea. Then, some colonials took action in protest, throwing tea in the harbor; others pitched stones at the Redcoats. In due course, representatives of the people met and drafted the Declaration of Independence. Two things stood out in what they wrote. One was a brief list of their God-given inalienable rights. The second was a long, very long "train of abuses" that listed the evils of the recently proactive English King. Their conclusion was, of course, that they should be free of these abuses. In short, the Declaration said that they were tired of being beaten down English subjects and that as citizens in a new nation they insisted on

having their rights as citizens, not subjects—which they enshrined in the Constitution.

Is there a parallel between the experience of the Founders in the generation before the Declaration and contemporary America? Is it not true that the Progressive/ Obamian government is promoting an ever-increasing number of programs, even if they are building on many earlier, weaker forms of the Progressive political view? The Progressive/Obamian governmental "reforms" are, in fact, taking strides, not just steps, beyond earlier efforts. Professor Kengor lists nine crucial "bellweather" characteristics of this movement, in his conference paper entitled, "Progressive Citizenship: Citizenship in the Modern Progressive/Liberal State." They are:

> advancing the progressive income tax; more rapid wealth redistribution—and government centralization to manage it; pump-priming government stimulation—to "grow the economy"; the oxymoronic same-sex marriage; universal health care; court sponsored change—in place of legislative based change; the nanny-sponsoring Health and Human Services; an expanded abortion frontier; and, importantly, the rapid creation of a new governing class with a 'government knows best' attitude.[42]

Increasingly, even the man on the street understands that the government is getting bigger, more expensive, and is eroding his basic freedoms, his citizenship rights.

Is it possible that millions of Americans will wake up one day and realize that they are no longer American citizens but now subjects of the American Government? Just like the Founding generation was before the Revolution? Will it be true, then, that government is no longer "of the people, by the people, and for the people?" Will it be, instead, a government "of an elite, by an elite, and for an elite?" Elites, so called "experts," believe that they, as such, know what is best for society. Do we not hear from governing agencies that they "have all power over all people and all matters whatsoever" that come before them? Is not the "train of abuses" of power by the government getting longer? Indeed, might it not be longer than the "train of abuses" that the Founders charged King George with in the Declaration of Independence? And what about being re-enslaved by thousands and thousands of government regulations. Is there suffocating governmental intrusion into the lives of citizens which echo the re-enslavement of blacks in the American South after 1900?

[42] Professor Kengor's paper is printed in the current Vision & Values *Conference Reader*.

Will the day come when Americans have been *subjects* of the government long enough? If that day comes, which it may, will there be enough people left who will desire to rise up and throw off their subjectship status? Is that why there are rumbles being heard about secession? Will there be a remnant who will want to rise up and regain the rights, privileges, and duties that once were enjoyed by Americans when they were citizens? Will it take some kind of revolution to do this? Is there wisdom to join with Jefferson and examine the proposition that it is good to have a revolution from time to time?

We end this postscript by emphasizing the question raised at its beginning. What is the future of citizenship in America? Will it return to the essentials of the Founders? Or, will the Obamians and other Progressives have their way on into the distant future, creating, in effect, two classes of Americans—a governing elite and the rest who exist as mere ***subjects***?

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