

AMERICAN CONSTITUTIONALISM
VOLUME II: RIGHTS AND LIBERTIES
Howard Gillman • Mark A. Graber • Keith E. Whittington

Supplementary Material

Chapter 4: The Early National Era – Equality/Race/Free Blacks/National Citizenship

*William Wirt, Opinion on the Rights of Free Virginia Negroes (1821)*¹

Most federal officials concluded that free persons of color were not citizens of the United States. William Wirt, the Attorney General in the Monroe Administration, defended this position when explaining why free persons of color could not command American ships. Federal law required that the commander be an American citizen and free blacks were not American citizens.

What reasons did Wirt give for this conclusion? Did he support the arguments Louis McLane made during the Missouri Compromise or did he have different reasons for rejecting black citizenship? Did Wirt leave open the possibility that some persons of color might be citizens of the United States? Are women American citizens under the logic of the argument below?

... Looking to the constitution as the standard of meaning, it seems very manifest that no person is included in the description of citizen of the United States who has not the full rights of a citizen in the State of his residence. Among other proofs of this, it will be sufficient to advert to the constitutional provision, that “the citizen of each State shall be entitled to all the privileges and immunities of citizen in the several States.” Now, if a person born and residing in Virginia, but possessing none of the high characteristic privileges of a citizen of the State, is nevertheless a citizen of Virginia in the sense of the constitution, then, on his removal into another State, he acquires all the immunities and privileges of a citizen of that other State, although he possessed none of them in the State of his nativity: a consequence which certainly could not have been in the contemplation of the convention. Again: the only qualification required by the constitution to render a person eligible as President, senator, or representative of the United States, is, that he shall be a “citizen of the United States” of a given age and residence. Free negroes and mulattoes can satisfy the requisitions of age and residence as well as the white man; and if nativity, residence, and allegiance combined, (without the rights and privileges of a white man,) are sufficient to make him a “citizen of the United States” in the sense of the constitution, then free negroes and mulattoes are eligible to those high offices, and may command the purse and sword of the nation.

For these and other reasons, which might easily be multiplied, I am of the opinion that the constitution, by the description of “citizens of the United States,” intended those only who enjoyed the full and equal privileges of white citizens in the State of their residence. If this be correct, . . . then free people of color in Virginia are not citizens of the United States . . . ; for such people have very few of the privileges of the citizens of Virginia.

1. They can vote at no election, although they may be freeholders.
2. They are incapable of any office of trust or profit, civil or military.
3. They are not competent witnesses against a white man in any case, civil or criminal.
4. They are not enrolled in the militia, are incapable of bearing arms, and are forbidden even to have in their possession military weapons, under the penalties of forfeiture and whipping.
5. They are subject to severe corporal punishment for raising their hand against a white man, except in defence against a wanton assault.

¹ 1 U.S. Op. Atty. Gen. 506 (1821).

6. They are incapable of contracting marriage with a white woman, and the attempt is severely punished.

These are some only of the incapacities which distinguished them from the white citizens of Virginia; but they are, I think, amply sufficient to show that such persons could not have been intended to be embraced by the description "citizens of the United States," in the sense of the constitution and acts of Congress.

The allegiance which the free man of color owes to the State of Virginia, is no evidence of citizenship; for he owes it not in consequence of any oath of allegiance. He is not required or permitted to take any such oath; the allegiance which he owes is that which a sojourning stranger owes—the mere consequence and return for the protection which he receives from the laws.

...



OXFORD
UNIVERSITY PRESS