Supplementary Material

Chapter 5: The Jacksonian Era—Equality/Race/Free Persons of Color—Citizenship

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State v. Manuel, 3 & 4 Dev. & Bat (NC 1838)

William Manuel was a free person of color who resided in North Carolina. In 1838, Manuel was convicted of assault and battery. He was fined $20. According to North Carolina law, if a free person of color could not pay a fine, they could be hired out for a period of time to any person willing to pay the fine. During that time period, the person of color for all practical purposes was a slave. Manuel claimed that the North Carolina law violated state constitutional provisions forbidding imprisonment for debt, excessive fines, and cruel or unusual punishments. He also claimed that the state law permitting free persons of color to be hired out granted exclusive provisions to white persons in violation of the "law of the land" provision in the state constitution. The Tennessee prosecutor responded that Manuel enjoyed none of these rights because free persons of color were not citizens of North Carolina. The trial judge rejected all of Manuel's contentions. Manuel appealed that judgment to the state Supreme Court.

Judge Gaston accepted Manuel's contention that he was a citizen of North Carolina, but rejected his contention that the practice of hiring out persons of color convicted of crimes violated the state constitution. State v. Manuel *is the last known judicial decision in which a court in a slave state asserted that free persons of color are state citizens. On what basis did Judge Gaston make that claim? Gaston found no constitutional problem with state laws that discriminate against persons of color. Gaston further claimed that all free persons in North Carolina enjoyed constitutional rights. Given his disposition of the case, why did Gaston bother discussing whether persons of color were citizens of North Carolina? Did being a state citizen in North Carolina entitle free persons of color to any particular rights?*

JUDGE GASTON

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. . . [T]he 39th section of the constitution is express that "*all prisoners* shall be bailable by sufficient sureties, unless for capital offences when the proof is evident or presumption great." Can it be contended that this universal command may be disregarded unless the prisoner be a citizen? Take the 9th section of the declaration of rights, "*all men* have a natural and inalienable right to worship Almighty God according to the dictates of their own consciences." Is this declaration to be understood as of a right belonging solely to the citizens of North Carolina? . . . We understand the section in the constitution, whatever may be its meaning, prohibiting the imprisonment of debtors as applying to debtors whether citizens or foreigners dwelling amongst us—and all the sections which interdict outrages upon the person, liberty, or property of a free-man, as securing to that extent for all amongst us who are recognized as persons entitled to liberty, and permitted the enjoyment of property. They are so many safeguards against the violation of civil rights and operate for the advantage of all by whom these rights, may be lawfully possessed.

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. . . According to the laws of this State, all human beings within it who are not slaves, fall within one of two classes. Whatever distinctions may have existed in the Roman law between citizens and free inhabitants, they are unknown to our institutions. Before our Revolution all free persons born within the dominions of the king of Great Britain, whatever their colour or complexion, were native born British subjects—those born out of his allegiance were aliens. Slavery did not exist in England, but it did exist in

the British colonies. Slaves were not in legal parlance persons, but property. The moment the incapacity—or disqualification of slavery was removed—they became persons, and were then either British subjects or not British subjects, accordingly as they were or were not born within the allegiance of the British king. Upon the Revolution, no other change took place in the law of North Carolina, than was consequent upon the transition from a colony dependent on an European king to a free and sovereign state. Slaves remained slaves, British subjects in North Carolina became North Carolina free-men. Foreigners until made members of the State continued aliens. Slaves manumitted here become freemen—and therefore if born within North Carolina are citizens of North Carolina—and all free persons born within the State are born citizens of the State.

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. . . The very Congress which framed our [state] constitution, was chosen by freeholders. That constitution extended the elective franchise to every freeman who had arrived at the age of 21, and paid a public tax; and it is a matter of universal notoriety that under it, free persons without regard to colour, claimed and exercised the franchise until it was taken from free men of colour a few years since by our amended constitution. But surely the possession of political power is not essential to constitute a citizen. If it be, then women, minors, and persons who have not paid public taxes are not citizens—and free white men who have paid public taxes and arrived at full age, but have not a freehold of fifty acres, inasmuch as they may vote for one branch and cannot vote for the other branch of our legislature, would be in an intermediate state, a sort of hybrid between citizens and noncitizens. The term "citizen" as understood in our law, is precisely analogous to the term *subject* in the common law, and the change of phrase has entirely resulted from the change of government. The sovereignty has been transferred from one man to the collective body of the people—and he who before was a "subject of the king" is now "a citizen of the State." . . .

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. . . Our power to question the validity of a legislative act, because it denounces a punishment which we think too severe or not of an usual kind—if it can exist at all—certainly exists only in cases so enormous that there can be no doubt but that all discretion has been thrown aside. This act, whatever objections it may be exposed to because of its liability to abuse, is not subject to imputations of this kind. It contemplates, where the offender has not money nor property whereby he may be visited for his offence, that he shall not therefore escape all punishment, but shall be compelled to work out his fine. There is no penitentiary or public work-house here, and therefore he must be put out to work under the charge of some one. Whether it was *expedient* to make that selection of that individual by an auction, and whether adequate precautions have been devised by the act to secure a proper keeper, and take from him adequate security for the humane discharge of his duties and exercise of his powers, are all inquiries exclusively belonging to legislative discretion. But the act does devise precautions designed to effect these purposes; makes the relation thereby created one well known to the law, that of master and apprentice, and subjects the master to legal visitation for inhumanity or improper treatment of such apprentice.

But it was insisted that the act in thus discriminating between the punishment of free persons of color and other free persons is arbitrary, repugnant to the principles of free government, at variance with the spirit of the 3d section of the bill of rights denouncing exclusive privileges, and not of the character properly embraced within the term "law of the land." We do not admit the validity of this objection. Whatever might be thought of a penal Statute which in its enactments makes distinctions between one part of the community and another capriciously and by way of favoritism, it cannot be denied that in the exercise of the great powers confided to the legislature for the suppression and punishment of crime, they may rightfully so apportion punishments according to the condition, temptations to crime, and ability to suffer, of those who are likely to offend, as to produce in effect that reasonable and practical equality in the administration of justice which it is the object of all free governments to accomplish. What would be cruelty if inflicted on a woman or a child, may be moderate punishment to a man. What might not be felt by a man of fortune, would be oppression to a poor man. What would be a slight inconvenience to a free negro, might fall upon a white man as intolerable degradation. The legislature must have a discretion over this subject, and that once admitted, this objection must fail for the reasons already assigned in examining the objections as to the exercise of the powers admitted to be discretionary.

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