AMERICAN CONSTITUTIONALISM

VOLUME II: RIGHTS AND LIBERTIES

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Supplementary Material

Chapter 6: The Civil War and Reconstruction—Democratic Rights/Citizenship

**Congressional Debate over the Seating of Hiram Revels (**1870)[[1]](#footnote-1)

*Hiram Revels (1827–1901)* *was an African-American minister, a chaplain in the Union Army, and the first president of Alcorn College. In 1870, the Mississippi state legislature elected Revels to the Senate, making him the first African-American to serve in that body. Democrats challenged his credentials. In their view, Revels became a citizen of the United States only in 1866, when Congress passed the Civil Rights Act of 1866, or in 1868, when the Fourteenth Amendment was ratified. They relied on Article I, Section 3 of the Constitution, which declares*

*No person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.*

*Revels was not a citizen in 1861, Democrats claimed, because the Supreme Court in* Dred Scott v. Sanford *(1857)* *held that free blacks were not American citizens. Revels became a citizen of the United States only in 1866 or 1868, since either the Civil Rights Act or Fourteenth Amendment was necessary to make persons of color American citizens. In either case, Democrats concluded, Revels had not been an American citizen for the requisite period of time.*

*The Senate voted 48–8 to seat Revels. Republicans insisted that* Dred Scott *was never good law, that the Fourteenth Amendment retroactively declared that persons of color were citizens from birth or that Revels was an exception to the rule of* Dred Scott*. Democrats claimed either that* Dred Scott *was the law of the land, or at least that* Dred Scott *was the land of the land before the Fourteenth Amendment was ratified. This issue would arise again in the* Insular Cases  *when Americans again considered whether* Dred Scott *was never good law, was entirely overruled by the post-Civil War Amendments or whether a residue of* Dred Scott *survived reconstruction.[[2]](#footnote-2)*

SENATOR HENRY WILSON of Massachusetts (Republican, Massachusetts)

I present the credentials of Hon. H.R. Revels, Senator-elect from Mississippi and I ask that they be read and that he be sworn in.

SENATOR GARRETT DAVIS (Democrat, Kentucky)

. . .

. . . One of the qualifications of a Senator is that he shall be a resident of the State and over thirty years of age, and another qualification is that he shall have been nine years a citizen of the United States. I know that there is evidence, and strong evidence, in relation to the fact that Revels is not a citizen of the United States.

. . .

Mr. President, we have heard a great deal about the *Dred Scott* decision. I read about it the time it was rendered; I have read it since deliberately and there is no human intellect, there is no legal learning that can overturn or shake the opinion of the Chief Justice in that case.

. . .

. . . [Revels] is not a citizen by the decision of nine of the judges of the Supreme Court of the United States in the *Dred Scott* case. He is not a citizen by one of the most learned, argumentative, powerful, and conclusive opinions that was ever written upon that bench.

SENATOR JOHN SHERMAN (Republican, Ohio)

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. . . [T]he decision of the *Dred Scott* case was a singular, strange infatuation; a denial of the truth of history; a perversion of the facts upon which it was based, and which I believe up to this hour had not received recognition from the legal profession to any considerable extent.

SENATOR DAVIS

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. . . If any truth of history can be demonstrated connected with the formation of the Constitution and fundamental law and long-continued legislation, I am perfectly assured it can be established beyond all doubt in any rational mind free from prejudice, that the term “citizen” as used in this clause of the Constitution [describing the qualifications of Senators] only applies to white men, women and children, who were natives of the States, or who were foreigners naturalized according to the laws of Congress.

SENATOR JAMES NYE (Republican, Nevada)

Sir, I never expected to hear read in the Senate of the United States, or in any court of justice where authority was looked for, the *Dred Scott* decision. Its author and the decision itself have sunk so deep into oblivion that the bubbles will never rise over them. What, sir, the *Dred Scott* decision authority in the United States! Sir, it has been repealed by the mightiest uprising which the world has ever witnessed. . . .

. . . The whole decision was an outrage upon the Constitution, a defiant outrage upon the rights of the people.

. . .

Sir, the party in power have eradicated and effaced that history, and have written in more attractive lines the history of the present and the future of this race. . . . The honorable Senator has forgotten that the people have shaken the *Dred Scott* decision off as the lion shakes the dew from his hair. . . .

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SENATOR WILLARD SAULSBURY (Democrat, Delaware)

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. . . [I]f you rely upon the fourteenth amendment of the Constitution, which you declare to be part of the Constitution, as rendering him eligible to the position of Senator upon this floor, my answer to that is that nine years not having elapsed since he became a citizen of the United States by virtue of that provision of the Constitution, he is prevented by the third paragraph of the third section of the first article from being a Senator in this body, because that requires that he shall have been a citizen for nine years.

. . .

You nowhere took issue with that decision before your people, according to my recollection, in reference to the question or the propriety of the decision as to the point whether Dred Scott as a citizen of the United States or whether a free negro or a free mulatto could be a citizen of the United States. You did not think to arouse the passions of the northern people; and I appeal to you, sir, whether any party made this issue in the struggles of that day, and whether anywhere before your people you took issue with the decision of the Supreme Court of the United States in reference to the citizenship of a negro or mulatto. . . .

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. . . If you did not believe that the decision in the *Dred Scott* case was true constitutional law, and that a negro or mulatto was not, within the meaning of the Constitution of the United States as was contemplated at the time of the adoption of the Constitution, I ask you why did you pass the civil rights bill?

. . . [Y]ou cannot say that you passed this act to make these persons citizens who had theretofore been slaves, because if free negroes were from the fact that they were free negroes citizens of the United States all who had been slaves became citizens just as much as those who had been free before the adoption of that amendment.

Therefore you passed this act . . . because you yourselves believed that without the passage of this act the free negroes and mulattoes, or as you may please to call them, the people of color, throughout the United States were not citizens. . . .

. . .

The very fact that you proposed the fourteenth amendment to the Constitution of the United States declaring that these persons were citizens of the United States, and requiring its ratification at the point of the bayonet, turning out members of the Legislatures elected in the different States in order to secure its ratification, is conclusive on this point. Why did you propose such an amendment, and why did you think it so important if without it these people were citizens of the United States? . . . You declared by your civil rights bill in 1866 that negroes were citizens of the United States. Of course it would only have effect after its passage. Then you proposed an amendment to change the Constitution, because it is no amendment unless it is a change, changing some existing provision or adding some provision that before did not exist, or supplying some defect, remedying some evil that existed, or bestowing some right that did not exist. Then you amend the fundamental law of the land by solemnly inserting into it, in 1868, a provision that this very class of people are citizens of the United States. Then they were not citizens before, or you would not have proposed that. . . .

Then sir, I submit to you, if you are consistent in your political action, do you not stand the self-confessed advocates of the principle for which I contend, that the principle asserted in the *Dred Scott* case, that free negroes and free mulattoes were not citizens of the United States prior to the adoption of the so-called fourteenth amendment?

SENATOR JACOB HOWARD (Republican, Michigan)

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[T]here is another objection raised to Mr. Revels that he is of African descent, and is not therefore a citizen of the United States, or that he has not been a citizen of the United States for nine years past, as required by the Constitution. Sir, I regard this objection as equally frivolous. It is not denied that Revels is a native-born inhabitant of the United States. It is not pretended that he was ever even a slave. He was born as free as you or I. Whether he was born in a free State I do not know, nor is it material to inquire; but I hold that in the sense of the Constitution every person born free within the limits of a State, not connected with a foreign minister’s family, is born a citizen of the United States, whether he be white or black. Nativity imparts citizenship in all countries; and that is sufficient for my purpose. I carry this doctrine without hesitation so far as to assert that even a black man born a slave shall, so far as citizenship is concerned in this country, be held to have been a citizen from his birth. He always owed allegiance to the United States and citizenship and allegiance are correlative terms.

I shall not go into that recondite inquiry as to the political status of a black man under the *Dred Scott* decision. I am nauseated with the arguments and objections springing out of that decision. It was a decision that never ought to have been made. . . . It was a partisan, political decision, the purpose of which was to establish by judicial decision and determination in these United States for all time to come the legality, the rightfulness, and even the piety of slavery.

. . . [T]hat decision has sunk into oblivion; or, if not into oblivion, it has sunk into eternal derision and contempt. The comment made upon the great wrongful judicial decision is to be seen in the dreadful war through which we have passed. . . . But sir, it has led also to another result. It has led to the complete emancipation of the entire black race and to their restoration to their lost rights as citizens of the United States. Instead of effecting its great object, that decision was but the precursor of the present triumphant position in which the freedom loving people of the United States find themselves. The great years have rolled around. The great principle of retributive justice has finally presented itself before us here at this moment, and the seat in this body once occupied by the leader of the slaveholders’ rebellion is now to be taken by a member of that despised race for the perpetual enslavement of which the war was waged, and for the perpetual enslavement of which that distinguished rebel vacated his seat here. Sir, there is something in this circumstance that should lead the lover of freedom, or true democratic principles, to rejoice with exceeding joy. It presents one of the most striking epochs in our history.

Now sir, Mr. Revels, by the action of Congress is a citizen of the United States. Shall we stand by our own legislation; shall we say to him, “You are a citizen of the United States; you have been properly elected a Senator of the United States, and we now welcome you to this body as one of the representatives of the State of Mississippi;” or shall we adopt the principles of the *Dred Scott* decision and say to him, “You shall not represent the people of Mississippi here, because you are of African descent that you are not a citizen of the United States, and therefore we will reject you”?

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SENATOR GEORGE WILLIAMS (Republican, Oregon)

. . . Chief Justice Taney, in deciding the question in that case, confined the decision exclusively to those persons who were “descendants of Africans who were imported into this country and sold as slaves.”

Now assuming the facts as stated in that plea, and the decision upon those facts to be correct, and how does it apply to Mr. Revels? Is there any evidence before the Senate that his ancestors were ever sold as slaves in the United States? Is there any evidence that his ancestors were negroes of pure blood, as in the case of Dred Scott? On the contrary, if we are allowed to judge from our own observation, it appears here, and has been assumed in discussion, that Mr. Revels is a person with a large preponderance of white blood in his veins; so that it must necessarily be that some of his ancestors were not slaves, and were never sold as such in the country.

All the decisions I have ever read referring to the question as to who are and who are not persons of color go upon the ground that persons in whom the white blood preponderates are not persons of color, and where the black blood preponderates they are persons of color; and so where the white blood preponderates the persons have always been citizens. . . .

SENATOR WILLIAM STEWART (Republican, Nevada)

Allow me a moment to make a suggestion to the Senator from Oregon. I would prefer to put this action on the ground that it is overruling the *Dred Scott* decision squarely, in my judgment.

SENATOR GEORGE VICKERS (Democrat, Maryland)

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I shall rely mainly on the judgment of the Supreme Court of the United States in the case of *Scott v. Sanford*. . . .

I know that that decision has been denounced not only in the Senate, but in the country, but it stands unrepealed, and is the adjudicated law of the land. . . .

. . .

The disqualification of the African race was as radical, fundamental, and perfect as language could make it. This is by a coordinate department of the Government, existing by the same Constitution as Congress, in its origin, design, and objects as thoroughly constitutional; in its powers and jurisdiction superior, because State and national legislation is measured and limited by the Constitution according to its judgment. Its decisions and decrees are as binding as the Constitution itself.

. . .

The thirteenth amendment declared, that neither slavery nor involuntary servitude, except as punishment for crime, should exist within the United States; the emancipation thus effected, it was conceded, did not make citizens of the persons thus liberated; hence the fourteenth amendment was concocted to make them citizens; it provides that “all persons born or naturalized in the United States and subject to its jurisdiction thereof are citizens of the United States” The present, not the imperfect tense is used; and it has not heretofore been claimed that such language could reach back to the birth and impart a new political quality to classes and races of men. Such an imputed quality would repudiate the portions of the Constitution for the importation of slaves down to the year 1808 and for the reclamation of fugitives. They were used only as descriptive of the persons intended to be embraced, whether negroes, mulattoes, quadroons, octoroons, or Indians. To contend that all such persons would made citizens from birth, by relating back to that period of time, can scarcely commend itself to the imagination of the extremist enthusiast.

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. . . Why was the civil rights bill passed? Why was the fourteenth constitutional amendment proposed and accepted? If these people were, according to the idea of the Senator from Michigan, citizens, why did you declare by your civil rights bill and your constitutional amendment that they were citizens of the United States? Would it have been necessary to do this? . . . .

I suppose there is not a Senator on this floor who voted either for the civil rights bill or for the submission of the constitutional amendment to the States, but what believed it was absolutely necessary and indispensable to make these people citizens of the United States; without the passage of that bill in the opinion of some, and without the passage and adoption of the constitutional amendment in the opinion of others, they would not have been citizens of the United States. After the civil rights bill was passed and when it passed there were serious objections to it. It was doubtful in the minds of many whether grants by legislative enactment could make a citizen of the United States; whether it did not require a constitutional amendment to make them such; and the better opinion was that it did require it, because by the Constitution they were not made citizens. You proceeded on the very ground that it was absolutely requisite that the amendment should be made which made the party now claiming his seat a citizen of the United States from the time of tis approval only; form that time he became a citizen; and as nine years have not elapsed, how can we, upon our oaths and in the view of the decisions of the Supreme Court, the practice of the Government, the decisions of all the State courts, the opinions of the Attorney General, say that in our opinion he was a citizen of the United States before the passage of the civil rights bill or of the fourteenth constitutional amendment?

SENATOR FREDERICK SAWYER (Republican, South Carolina)

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The country expects, the people of the United States expect, as a natural and logical sequence to the measures of reconstruction which have been adopted in the last five years, that we shall admit to a seat on this floor this representative of that race whose rights have recently been given to them. They do not expect us to go back and reason upon the principles of that opinion known as the *Dred Scott* decision. Those men who chafed under it at the time it was uttered are not likely to bear patiently the actions of the Senate of the United States in this year of grace 1870 should we attempt to base that action upon its dead dogma.

. . .

It is too late to talk about the *Dred Scott* decision. . . . [I]n the great court of errors to which the appeal has been taken the decision has been reversed, and no party in this country, under any name or organization, will ever be able to revive the dead carcass of that odious decision.

SENATOR JOHN SCOTT (Republican, Pennsylvania)

. . .

It is alleged that he is a man of color, and therefore he was not a citizen prior to the enactment of the civil rights bill. Now, sir, no one stands here to question that his citizenship was an open question before the adoption of the civil rights bill. The history of the litigation that had occurred in various States, and that finally got into the Supreme Court of the United States in the *Dred Scott* case, is enough to show that a question was made as to whether a colored man was or was not a citizen of the United States. The decisions in Kentucky, the decisions in Connecticut, the decisions in my own State, the discussion which took place upon the admission of Missouri into the Union, the *Dred Scott* case, the universal discussion of this question at one period in our history—these are enough to show that the public mind was not settled upon the question. But if it was not settled then, could it be more effectively settled than it has been, first by passage of the civil rights bill, and then, if that was not sufficient as a mere act of Congress to determine the status of citizenship in the face of a decision of the Supreme Court, surely it will not be contended that the fourteenth constitutional amendment, declaring that all persons born within the United States are citizens, is not sufficient to settle it.

The civil rights bill, if its text be turned to, and the fourteenth amendment, if its text be turned to, will be found to be both declaratory. They do not enact that “from henceforth all persons born within the United States shall be citizens,” but the present tense is used in both: “all persons are citizens of the United States.” If that be sufficient to settle the question, if that be enough as a declaratory law to declare that all persons are citizens of the United States, where does this man stand who now presents himself as Senator-elect from Mississippi?

SENATOR STEWART

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[T]he Constitution as it now stands reads, “All persons born in the United States” “are citizens.” Then there is another clause declaring that as a qualification for Senator a man shall have been nine years a citizen. Now, I undertake to say that this relates back to birth, and gives them all the privileges of citizens. They are citizens, and they are declared to have all the privileges of other citizens born in the country. All clauses of the Constitution stand together and must be construed together. The question is, has this man been born in the United States; is he thirty years old? Taking the whole Constitution together, who, reading this Constitution as it now stands today, without dragging history in, would doubt that a man born in the United States and who had always lived in the United States, whether he had been a slave or not, would be eligible for a seat here if he had the other qualifications prescribed?

SENATOR CHARLES SUMNER (Republican, Massachusetts)

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. . . Nearly a generation has intervened since I insisted at home, in Massachusetts, that all must be equal before the law, without any distinction of color. Several years have intervened since here in this Chamber I insisted on the same truth, and at the same time, showed how, at the adoption of the national Constitution, colored persons were citizens according to the terms of all the State constitutions, except South Carolina, and perhaps, Georgia. These arguments and authorities were not answered then. They cannot be answered. It is useless to interpose ancient pretensions. They are dead beyond resurrection. It is useless to interpose the *Dred Scott* decision. Born a putrid corpse, this decision became at once a stench in the nostrils and a scandal to the court itself, which made haste to turn away from its offensive offspring. By the subsequent admission of a colored lawyer to practice at its bar, this decision was buried out of sight, to be remembered only as a warning and a shame.

1. *Congressional Globe*, 41st Cong., 2nd Sess. (1870), 1503–14, 1542–44, 1557–68; *Congressional Globe*, 41st Cong., 2nd Sess., App. (1870), 127–28. [↑](#footnote-ref-1)
2. For a fuller account, see Richard A. Primus, “The Riddle of Hiram Revels,” *Harvard Law Review* 119 (2006): 1680. [↑](#footnote-ref-2)