"We the People", but, Who are We?

Gary Hunt
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Chapter I

In some research for another article (The Fourteenth Article in Amendment to the Constitution), I ran across a rather enlightening revelation. It was, just 60 years after the Constitution, a clear and concise definition of just (and only) who the "We the People", in the Preamble to the Constitution, really are.

Now, most of us will assume that any citizen of the United States is one of, "We the People". I must admit that until recently, I, too, believed this to be the case.

Regardless of the (political) correctness of this assumption, we must understand that the law is what it was intended to be, not what we might want it to be. There is only one means by which that can be changed, and that is the amendment process defined in Article V, of the Constitution.

So, here is what was revealed to us, by the Supreme Court of the United States, with regard to a definitive answer to the question. The case is Dred Scott v. Sandford - 60 U.S. 393 (1856)

As recently as ten years before the Fourteenth Amendment was submitted to the States by the Congress, an historical, and often referred to, case was heard by the Supreme Court.

Scott was born a slave, in Missouri. As such, he was not a citizen. His "owner" laid hands on Scott, his wife and 2 children. Scott sued Sandford for assault. Scott was awarded his freedom by a Saint Louis County, Missouri, Circuit Court. The case was appealed to the State Supreme Court and reversed. The Circuit Court then reheard the case. Scott made exception to the instructions to the jury. The jury then ruled against Scott. Based upon the "Exception".

The case eventually ended up in the Supreme Court. In its decision (below), the Court pointed out that Scott had claimed to be a citizen of Missouri, which would give him standing to sue Sandford. It found that though Scott was not a citizen of Missouri, or, of the United States, that standing for the Court to hear the case was based upon the Courts acting on the fact that the question of citizenship was not in the plea that brought the matter before the Court.

You will see that even though Scott had no standing, the Court decided to hear the case, anyway. If you do not challenge jurisdiction (Sandford's obligation), the Court may assume jurisdiction, the laws of the land notwithstanding..

Chief Justice Taney delivered the opinion of the Court. Excerpts are from that decision.

> *"That plea denies the right of the plaintiff to sue in a court of the United States, for the reasons therein stated. If the question raised by it is legally before us, and the court should be of opinion that the facts stated in it disqualify the plaintiff from becoming a citizen, in the sense in which that word is used in the Constitution of the United States, then the judgment of the Circuit Court is erroneous, and must be reversed. It is suggested, however, that this plea is not before us; and that as the judgment in the court below on this plea was in favor of the plaintiff, he does not seek to reverse it, or bring it before the court for revision by his writ of error; and also that the defendant waived this defence by pleading over, and thereby admitted the jurisdiction of the court."*

Since the matter of citizenship was not in the plea that brought the matter before the Court, the Court will not rule on Scott's standing.

However, the Court now finds that it has a forum to define just what a citizen is -- a point that had only been addressed in rather ambiguous terms in the Constitution, and not since addressed by the Congress, or the Court.

Taney goes on to ask this important question:

> *Can a negro, whose ancestors were imported into this country, and sold as slaves, become a member of the political community formed and brought into existence by the Constitution of the United States, and as such become entitled to all the rights, and privileges, and immunities, guaranteed by that instrument to the citizen? "*

Further defining the question, he says:

> *The only matter in issue before the court, therefore, is, whether the descendants of such slaves, when they shall be emancipated, or who are born of parents who had become free before their birth, are citizens of a State, in the sense in which the word citizen is used in the Constitution of the United States.*

While the decision covers many aspects, and many ways, of addressing the question, I will provide only those that are concise and indicative of the sense of the Court and the decision held to. Remember, as you read, that this decision predates the 14th Amendment.

> *The words 'people of the United States' and 'citizens' are synonymous terms, and mean the same thing. They both describe the political body who, according to our republican institutions, form the sovereignty, and who hold the power and conduct the Government through their representatives. They are what we familiarly call the 'sovereign people,' and every citizen is one of this people, and a constituent member of this sovereignty. The question before us is, whether the class of persons described in the plea in abatement compose a portion of this people, and are constituent members of this sovereignty? We think they are not, and that they are not included, and were not intended to be included, under the word 'citizens' in the Constitution, and can therefore claim none of the rights and privileges which that instrument provides for and secures to citizens of the United States. On the contrary, they were at that time considered as a subordinate and inferior class of beings, who had been subjugated by the dominant race, and, whether emancipated or not, yet remained subject to their authority, and had no rights or privileges but such as those who held the power and the Government might choose to grant them.*

Well, there is an interesting phrase, used in the discussion of the Fourteenth Amendment by the Senate, "remained subject to their authority".

> *In discussing this question, we must not confound the rights of citizenship which a State may confer within its own limits, and the rights of citizenship as a member of the Union. It does not by any means follow, because he has all the rights and privileges of a citizen of a State, that he must be a citizen of the United States. He may have all of the rights and privileges of the citizen of a State, and yet not be entitled to the rights and privileges of a citizen in any other State. For, previous to the adoption of the Constitution of the United States, every State had the undoubted right to confer on whomsoever it pleased the character of citizen, and to endow him with all its rights. But this character of course was confined to the boundaries of the State, and gave him no rights or privileges in other States beyond those secured to him by the laws of nations and the comity of States. Nor have the several States surrendered the power of conferring these rights and privileges by adopting the Constitution of the United States. Each State may still confer them upon an alien, or any one it thinks proper, or upon any class or description of persons; yet he would not be a citizen in the sense in which that word is used in the Constitution of the United States, nor entitled to sue as such in one of its courts, nor to the privileges and immunities of a citizen in the other States. The rights which he would acquire would be restricted to the State which gave them. The Constitution has conferred on Congress the right to establish an uniform rule of naturalization, and this right is evidently exclusive, and has always been held by this court*

to be so. Consequently, no State, since the adoption of the Constitution, can by naturalizing an alien invest him with the rights and privileges secured to a citizen of a State under the Federal Government, although, so far as the State alone was concerned, he would undoubtedly be entitled to the rights of a citizen, and clothed with all the rights and immunities which the Constitution and laws of the State attached to that character.

It is very clear, therefore, that no State can, by any act or law of its own, passed since the adoption of the Constitution, introduce a new member into the political community created by the Constitution of the United States. It cannot make him a member of this community by making him a member of its own. And for the same reason it cannot introduce any person, or description of persons, who were not intended to be embraced in this new political family, which the Constitution brought into existence, but were intended to be excluded from it.

The question then arises, whether the provisions of the Constitution, in relation to the personal rights and privileges to which the citizen of a State should be entitled, embraced the negro African race, at that time in this country, or who might afterwards be imported, who had then or should afterwards be made free in any State; and to put it in the power of a single State to make him a citizen of the United States, and endow him with the full rights of citizenship in every other State without their consent? Does the Constitution of the United States act upon him whenever he shall be made free under the laws of a State, and raised there to the rank of a citizen, and immediately clothe him with all the privileges of a citizen in every other State, and in its own courts?

The court think the affirmative of these propositions cannot be maintained. And if it cannot, the plaintiff in error could not be a citizen of the State of Missouri, within the meaning of the Constitution of the United States, and, consequently, was not entitled to sue in its courts."

It is true, every person, and every class and description of persons, who were at the time of the adoption of the Constitution recognised as citizens in the several States, became also citizens of this new political body; but none other; it was formed by them, and for them and their posterity, ***but for no one else****. And the personal rights and privileges guaranteed to citizens of this new sovereignty were intended to embrace those only who were then members of the several State communities, or who should afterwards by birthright or otherwise become members, according to the provisions of the Constitution and the principles on which it was founded. It was the union of those who were at that time members of distinct and separate political communities into one political family, whose power, for certain specified purposes, was to extend over the whole territory of the United States. And it gave to each citizen rights and privileges outside of his State which he did not before possess, and placed him in every other State upon a perfect equality with its own citizens as to rights of person and rights of property; it made him a citizen of the United States.*

Well, that makes pretty clear who could not be a "citizen of the United States". So, let us look, from the other side, at who was a "citizen of the United States".

"It becomes necessary, therefore, to determine who were citizens of the several States when the Constitution was adopted. And in order to do this, we must recur to the Governments and institutions of the thirteen colonies, when they separated from Great Britain and formed new sovereignties, and took their places in the family of independent nations. We must inquire who, at that time, were recognised as the people or citizens of a State, whose rights and liberties had been outraged by the English Government; and who declared their independence, and assumed the powers of Government to defend their rights by force of arms.

In the opinion of the court, the legislation and histories of the times, and the language used in the Declaration of Independence, show, that neither the class of persons who had been imported as slaves, nor their descendants, whether they had become free or not, were then acknowledged as a part of the people, nor intended to be included in the general words used in that memorable instrument.

Now, clearly, it is those who initiated the fight for independence that are of the class recognized by the Constitution as "citizens of the United States". Many have pointed out that one of the first to "die for the cause" was a negro named Crispus Attucks, who was shot to death in the "Boston Massacre", in 1770. This, however, in the eyes of the Court, does not qualify him as one of the people -- for which the country was intended.

Though the decision of the Court continues to give examples of just how the Court perceived this relationship, I would prefer to not include too many more of the over one-hundred and ten thousand words in the Decision. There are some words, however, that warrant our attention in fully understanding what was intended by the founding of this nation, and so I will provide these few additional paragraphs:

"The language of the Declaration of Independence is equally conclusive:

It begins by declaring that, 'when in the course of human events it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth the separate and equal station to which the laws of nature and nature's God entitle them, a decent respect for the opinions of mankind requires that they should declare the causes which impel them to the separation.'

It then proceeds to say: 'We hold these truths to be self-evident: that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among them is life, liberty, and the pursuit of happiness; that to secure these rights, Governments are instituted, deriving their just powers from the consent of the governed.'

The general words above quoted would seem to embrace the whole human family, and if they were used in a similar instrument at this day would be so understood. But it is too clear for dispute, that the enslaved African race were not intended to be included, and formed no part of the people who framed and adopted this declaration; for if the language, as understood in that day, would embrace them, the conduct of the distinguished men who framed the Declaration of Independence would have been utterly and flagrantly inconsistent with the principles they asserted; and instead of the sympathy of mankind, to which they so confidently appealed, they would have deserved and received universal rebuke and reprobation.

Yet the men who framed this declaration were great men-high in literary acquirements-high in their sense of honor, and incapable of asserting principles inconsistent with those on which they were acting. They perfectly understood the meaning of the language they used, and how it would be understood by others; and they knew that it would not in any part of the civilized world be supposed to embrace the negro race, which, by common consent, had been excluded from civilized Governments and the family of nations, and doomed to slavery. They spoke and acted according to the then established doctrines and principles, and in the ordinary language of the day, and no one misunderstood them. The unhappy black race were separated from the white by indelible marks, and laws long before established, and were never thought of or spoken of except as property, and when the claims of the owner or the profit of the trader were supposed to need protection.

This state of public opinion had undergone no change when the Constitution was adopted, as is equally evident from its provisions and language.

The brief preamble sets forth by whom it was formed, for what purposes, and for whose benefit and protection. It declares that it is formed by the people of the United States; that is to say, by those who were members of the different political communities in the several States; and its great object is declared to be to secure the blessings of liberty to themselves and their posterity. It speaks in general terms of the people of the United States, and of citizens of the several States, when it is providing for the exercise of the powers granted or the privileges secured to the citizen. It does not define what description of persons are intended to be included under these terms, or who shall be regarded as a citizen and one of the people. It uses them as terms so well understood, that no further description or definition was necessary.

Therefore, an attempt to apply the standards upon which this nation was founded to the morality of today, or, even, of 1856, when this case was heard, would be to deny the intention of the founders. This does not preclude the utilization of the Fifth Article (Amendment Process) of the Constitution to effect change, which was to be partially achieved eleven years later. It simply explains what a "citizen of the United States" was, prior to the Fourteenth Amendment.

Now the question arises as to whether the 14th Amendment changed who "We the People" are, or not.

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Chapter II

In the first Chapter, Justice Taney [Chief Justice of the Supreme Court who delivered the Decision in Dred Scott v. Sandford, 60 U.S. 393 (1856)], speaking from the past, explained who was, and, who was not of that class of people known as "We the People. Recapping that post:

*We think they [descendents of slaves, whether free, or not] are not, and that they are not included, and were not intended to be included, under the word 'citizens' in the Constitution, and can therefore claim none of the **rights** and privileges which that instrument provides for and secures to citizens of the United States. On the contrary, they were at that time considered as a subordinate and inferior class of beings, who had been subjugated by the dominant race, and, whether emancipated or not, yet remained subject to their authority, and had no rights or privileges but such as those who held the power and the Government might choose to grant them.*

* * *

*It is true, every person, and every class and description of persons, who were at the time of the adoption of the Constitution recognised as citizens in the several States, became also citizens of this new political body; but none other; it was formed by them, and for them and their posterity, **but for no one else**. And the personal rights and privileges guaranteed to citizens of this new sovereignty were intended to embrace those only who were then members of the several State communities, or who should afterwards by birthright or otherwise become members, according to the provisions of the Constitution and the principles on which it was founded. It was the union of those who were at that time members of distinct and separate political communities into one political family, whose power, for certain specified purposes, was to extend over the whole territory of the United States. And it gave to each citizen rights and privileges outside of his State which he did not before possess, and placed him in every other State upon a perfect equality with its own citizens as to rights of person and rights of property; it made him a citizen of the United States.*

So, the rights and privileges were not conferred upon those who were not citizens at the time of adoption of the Constitution, and their descendents and others. Those rights, too, are defined as inclusive, regardless of whether he is in his state or another state.

So, in 1867, the 14th Amendment to the Constitution was ratified. However, it did not convey rights, only privileges and immunities, to wit [Fourteenth Amendment]:

> Section 1--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. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

However, this Amendment did not change or undo that which Taney had described as the "citizens of the United States", though a new class was created by the 14th Amendment.

Now, I know a lot of people don't see it that way. They believe that the 14th Amendment merged the ex-slaves and their descendents into the same class of people that had previously held the title of "citizens of the United States", or, "We the People". However, if you will note the wording of the 14th Amendment, you will see that "rights" were not conveyed, only "privileges and immunities". Now, this may seem small, or insignificant, though that is because we have been subjected to "political correctness" and mountains of legislation establishing "civil rights". However, the Framers never referred to the rights protected by the Constitution as civil, since civil implies granted by government -- which is exactly what the legislature has done -- enact laws granting civil rights. These fundamental rights granted by God are not granted by government, and, they are not civil rights. They were the object and goal of the colonists from April 19, 1775 to the ratification of the Constitution, 14 years later.

What is very important to understand is that when a law is enacted, or a constitution or amendment ratified, the intent at the time of enactment or ratification is, and must be, what was intended -- at that time. To think otherwise is to allow the legislation, or even the Constitution, to mean what was not intended by the sleight of redefining words, concepts, or even enforcement. If that is how we are to operate, we are not a nation of laws rather, of man, and that man who sits in Washington; Member of Congress, President,. Justice or Administrative Agency head is free to promulgate what he wants the law to be and applies not what was intended to be, rather, what he desires it to be.

As James Madison said, in Federalist Papers #62:

> It poisons the blessing of liberty itself. It will be of little avail to the people, that the laws are made by men of their own choice, if the laws be so voluminous that they cannot be read, or so incoherent that they cannot be understood; if they be repealed or revised before they are promulgated, or undergo such incessant changes that no man, who knows what the law is today, can guess what it will be tomorrow. Law is defined to be a rule of action; but how can that be a rule, which is little known, and less fixed?

So, as you contemplate what is said in this Chapter, understand that only the words of those who were alive at the time of these activities can tell is what they meant. It is only their words, not what some ACLU lawyer might try to make them out to be, that we must be obedient to. To be obedient to any other interpretation is, at best, disobedience to the Constitution.

We have seen the affect of the 14th Amendment on the right, privileges and immunities of those who were and were not of the class known as "We the People". Now the question arises as to whether the 14th Amendment changed who "We the People" are, and, if so, what proof do we have that only "privileges and immunities, not rights, were conveyed by that Amendment.

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Chapter III

So, we have established that "rights" were not conveyed by the Fourteenth Amendment, only "privileges and immunities". Or, have we? Of course, to this point, it is only words and omission of words that can lead us to that conclusion.

Understand, however, that the Constitution, the Bill of Rights and early legislation was written so that all could understand what was being required. After all, as James Madison said (Federalist Papers #62), "Law is defined to be a rule of action". If it is a rule of action, then it must be written so that anybody can understand it.

Let's see if we can determine whether the premise that rights were not conveyed is properly construed, as presented. To do so, we must, once again, return to the past -- to those who lived the times and understood what the intention of the 14th Amendment really was.

Our answer can be found in another Supreme Court decision, decided just 7 years after the ratification of the 14th Amendment. The case is Minor v. Happersett, 88 U.S. 162 (1874).

At issue was whether the Fourteenth Amendment conveyed the right to vote to a woman, since she was made "a citizen of the United States" by that Amendment. Understand that many states did not recognize woman as being full citizens and they were denied the right to vote, own land, sue in court, inherit property, or hold office; or portions of some of these restrictions, depending on the state.

Understand that this case was heard just seven years after the ratification of the 14th Amendment, and all parties were fully aware of the Amendment, its interpretation and ramifications. They lived the times, unlike those of us who have to search back to find the intent of laws and amendments.

The case introduces the problem with the following statement of facts:

> The fourteenth amendment to the Constitution of the United States, in its first section, thus ordains:
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> > '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. No State shall make or enforce any law, which shall abridge the privileges or immunities of citizens of the United States. Nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction, the equal protection of the laws.'
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> And the constitution of the State of Missouri thus ordains:
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> > 'Every male citizen of the United States shall be entitled to vote.'

Minor, as described by the Court, set forth the following arguments:

> 1st. <u>As a citizen of the United States, the plaintiff was entitled to any and all the 'privileges and immunities' that belong to such position however defined; and as are held, exercised, and enjoyed by other citizens of the United States</u>.
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> 2d. <u>The elective franchise is a 'privilege' of citizenship, in the highest sense of the word. It is the privilege preservative of all rights and privileges; and especially of the right of the citizen to participate in his or her government</u>.
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> 3d. The denial or abridgment of this privilege, if it exist at all, must be sought only in the fundamental charter of government,-the Constitution of the United States. If not found there, no inferior power or jurisdiction can legally claim the right to exercise it.

4th. But the Constitution of the United States, so far from recognizing or permitting any denial or abridgment of the privileges of its citizens, expressly declares that 'no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.'

5th. It follows that the provisions of the Missouri constitution and registry law before recited, are in conflict with and must yield to the paramount authority of the Constitution of the United States.

The Court (in the decision) then posed the question:

> The question is presented in this case, whether, since the adoption of the fourteenth amendment, a woman, who is a citizen of the United States and of the State of Missouri, is a voter in that State, notwithstanding the provision of the constitution and laws of the State, which confine the right of suffrage to men alone.

In providing an answer to the question, we find:

> Looking at the Constitution itself we find that it was ordained and established by 'the people of the United States [Preamble to the Constitution],' and then going further back, we find that these were the people of the several States that had before dissolved the political bonds which connected them with Great Britain, and assumed a separate and equal station among the powers of the earth [Declaration of Independence], and that had by Articles of Confederation and Perpetual Union, in which they took the name of 'the United States of America,' entered into a firm league of friendship with each other for their common defence, the security of their liberties and their mutual and general welfare, binding themselves to assist each other against all force offered to or attack made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretence whatever [Articles of Confederation].
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> Whoever, then, was one of the people of either of these States when the Constitution of the United States was adopted, became ipso facto a citizen-a member of the nation created by its adoption. He was one of the persons associating together to form the nation, and was, consequently, one of its original citizens. As to this there has never been a doubt. Disputes have arisen as to whether or not certain persons or certain classes of persons were part of the people at the time, but never as to their citizenship if they were.
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> Other proof of like character might be found, but certainly more cannot be necessary to establish the fact that sex has never been made one of the elements of citizenship in the United States. In this respect men have never had an advantage over women. The same laws precisely apply to both. The fourteenth amendment did not affect the citizenship of women any more than it did of men. In this particular, therefore, the rights of Mrs. Minor do not depend upon the amendment. She has always been a citizen from her birth, and entitled to all the privileges and immunities of citizenship. The amendment prohibited the State, of which she is a citizen, from abridging any of her privileges and immunities as a citizen of the United States; but it did not confer citizenship on her, that she had before its adoption.
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> It is clear, therefore, we think, that the Constitution has not added the right of suffrage to the privileges and immunities of citizenship as they existed at the time it was adopted. This makes it proper to inquire whether suffrage was coextensive with the citizenship of the States at the time of its adoption. If it was, then it may with force be argued that suffrage was one of the rights which belonged to citizenship, and in the enjoyment of which every citizen must be protected. But if it was not, the contrary may with propriety be assumed.

When the Federal Constitution was adopted, all the States, with the exception of Rhode Island and Connecticut, had constitutions of their own. These two continued to act under their charters from the Crown. Upon an examination of those constitutions we find that in no State were all citizens permitted to vote. Each State determined for itself who should have that power. Thus, in New Hampshire, 'every male inhabitant of each town and parish with town privileges, and places unincorporated in the State, of twenty-one years of age and upwards, excepting paupers and persons excused from paying taxes at their own request,' were its voters; in Massachusetts 'every male inhabitant of twenty-one years of age and upwards, having a freehold estate within the commonwealth of the annual income of three pounds, or any estate of the value of sixty pounds;' in Rhode Island 'such as are admitted free of the company and society' of the colony; in Connecticut such persons as had 'maturity in years, quiet and peaceable behavior, a civil conversation, and forty shillings freehold or forty pounds personal estate,' if so certified by the selectmen; in New York 'every male inhabitant of full age who shall have personally resided within one of the counties of the State for six months immediately preceding the day of election . . . if during the time aforesaid he shall have been a freeholder, possessing a freehold of the value of twenty pounds within the county, or have rented a tenement therein of the yearly value of forty shillings, and been rated and actually paid taxes to the State;' in New Jersey 'all inhabitants . . . of full age who are worth fifty pounds, proclamation-money, clear estate in the same, and have resided in the county in which they claim a vote for twelve months immediately preceding the election;' in Pennsylvania 'every freeman of the age of twenty-one years, having resided in the State two years next before the election, and within that time paid a State or county tax which shall have been assessed at least six months before the election;' in Delaware and Virginia 'as exercised by law at present;' in Maryland 'all freemen above twenty-one years of age having a freehold of fifty acres of land in the county in which they offer to vote and residing therein, and all freemen having property in the State above the value of thirty pounds current money, and having resided in the county in which they offer to vote one whole year next preceding the election;' in North Carolina, for senators, 'all freemen of the age of twenty-one years who have been inhabitants of any one county within the State twelve months immediately preceding the day of election, and possessed of a freehold within the same county of fifty acres of land for six months next before and at the day of election,' and for members of the house of commons 'all freemen of the age of twenty-one years who have been inhabitants in any one county within the State twelve months immediately preceding the day of any election, and shall have paid public taxes;' in South Carolina 'every free white man of the age of twenty-one years, being a citizen of the State and having resided therein two years previous to the day of election, and who hath a freehold of fifty acres of land, or a town lot of which he hath been legally seized and possessed at least six months before such election, or (not having such freehold or town lot), hath been a resident within the election district in which he offers to give his vote six months before said election, and hath paid a tax the preceding year of three shillings sterling towards the support of the government;' and in Georgia such 'citizens and inhabitants of the State as shall have attained to the age of twenty-one years, and shall have paid tax for the year next preceding the election, and shall have resided six months within the county.'

[Note: you may want to review the list of voter qualifications, above, and consider that we were strong and building our country into the greatest nation in the world, when the voters had to be above debt to vote -- rather than able to vote themselves "a chicken in every pot".]

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And still again, after the adoption of the fourteenth amendment, it was deemed necessary to adopt a fifteenth, as follows: 'The right 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.' The fourteenth amendment had already provided that no State should make or enforce

> any law which should abridge the privileges or immunities of citizens of the United States. If suffrage was one of these privileges or immunities, why amend the Constitution to prevent its being denied on account of race, &c.? Nothing is more evident than that the greater must include the less, and if all were already protected why go through with the form of amending the Constitution to protect a part?
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> ... Women were excluded from suffrage in nearly all the States by the express provision of their constitutions and laws. If that had been equivalent to a bill of attainder, certainly its abrogation would not have been left to implication. Nothing less than express language would have been employed to effect so radical a change. So also of the amendment which declares that no person shall be deprived of life, liberty, or property without due process of law, adopted as it was as early as 1791. If suffrage was intended to be included within its obligations, language better adapted to express that intent would most certainly have been employed. The right of suffrage, when granted, will be protected. He who has it can only be deprived of it by due process of law, but in order to claim protection he must first show that he has the right.

So, clearly, from this decision, rendered shortly after the Fourteenth Amendment was ratified, we see that there is a distinction between "rights" and "privileges and immunities", and that any grant of right would require a constitutional amendment to confer it on any other than "We the People".

This does beg the question of whether the Fifteenth Amendment confers more than the right to vote. Does it also confer the right to hold office, when the requisite for that office is "Citizen of the United State" [Art. I. Section 2, clause 2, and, Art. I, Section 3, clause 3, Constitution], and, "a natural born Citizen of the United States" [Art. II, Section 1, clause 5, Constitution], unless such "right" is specifically conferred?

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Chapter IV

This must lead us to question whether there is any substance to these very significant acts and decision. Is there any long-lasting affect, as a result of them? If so, has anything changed them? If there have been no changes, are there still two distinct classes of people in this country?

Do answer these questions, we need only jump forward another 34 years, to 1908. This Supreme Court decision will clearly lay out that there are, indeed, two classes of people, and that one is subject to federal jurisdiction and protection, while the other is not.

The case is Twining v. State of New Jersey - 211 U.S. 78 (1908). It has two elements, at least pertinent to this discussion. First was whether there was jurisdiction, under the Fourteenth Amendment, to a state citizen; and, what did the Fourteenth Amendment extend to a "citizen of the United States".

Albert C. Twining and David C. Cornell were indicted by a Grand Jury, and, convicted of providing "false papers" to a state banking examiner. They were sentenced to prison terms, and Twining appealed the action of the New Jersey Court. He held that the requirement to turn over papers to the examiner, absent a court order, denied him "due process" under the Fourteenth Amendment. He lost that case and pursued a remedy in the Supreme Court.

Justice Moody provided the decision of the Supreme Court. In summing up the case, he posed the following:

> *". . . whether such a law [state law] violates the 14th Amendment, either by abridging the privileges or immunities of citizens of the United States, or by depriving persons of their life, liberty, or property without due process of law. In order to bring themselves within the*

> *protection of the Constitution it is incumbent on the defendants to prove two propositions: First, that the exemption from compulsory self- incrimination is guaranteed by the Federal Constitution against impairment by the states; and, second, if it be so guaranteed, that the exemption was in fact impaired in the case at bar. The first proposition naturally presents itself for earlier consideration. If the right here asserted is not a Federal right, that is the end of the case. We have no authority to go further and determine whether the state court has erred in the interpretation and enforcement of its own laws.*

Well, that last point, "*If the right here asserted is not a Federal right, that is the end of the case*.", will lead to the final decision of the Court, though we must first look at why they denied Twining the protection, under the Fourteenth Amendment, that he sought.

The Court brought out that two states, Iowa and New Jersey, had provisions that did not allow compulsory testimony against one's self, and, that those two did have limits on compulsory testimony, though not as broad as the other states. This was felt to satisfy the intent, since it was a state decision based upon their view of the intention of the Fifth Amendment ("No person . . . shall be compelled in any criminal case to be a witness against himself"), that established the right of the state to enact a law requiring the turning over of the papers to the examiner.

So, the question resolved itself to whether the federal interpretation of the Fifth Amendment was superior to the state law, and, if so, under what circumstances.

Since Twining and Cornel were both citizens of New Jersey, and the case was not between parties of different states, or any other qualifiers for federal intervention, they retained their status as state citizens, dealing with the laws of that state, without "*Federal right[s]*" being conferred to them.

Let's separate the points of significance in this case:

1. Is there a difference between state citizens and "citizens of the United States", as established by the Fourteenth Amendment?
2. If so, to what extent does the Fourteenth Amendment confer rights to those who are protected thereby?

The Court goes on to give us some insight into the second point.

> *"It is obvious . . . that it has been supposed by the states that, so far as the state courts are concerned, the privilege had its origin in the Constitutions and laws of the states, and that persons appealing to it must look to the state for their protection. Indeed, since, by the unvarying decisions of this court, the first ten Amendments of the Federal Constitution are restrictive only of national action, there was nowhere else to look up to the time of the adoption of the 14th Amendment, and the state, at least until then, might give, modify, or withhold the privilege at its will."*

So, the states were within their rights, as they existed prior to the Fourteenth Amendment, and that those rights did not, until the Fourteenth was ratified, include the restrictive first ten amendments. Prior to the Fourteenth Amendment, the Court recognized that the Constitution did not apply to the states, so long as they were not in conflict with the Constitution. Essentially, they are conferring all privileges of those first ten amendments, to those who so qualify, for the protections afforded by the Fourteenth.

The Court continues:

> *"The 14th Amendment withdrew from the states powers theretofore enjoyed by them to an extent not yet fully ascertained, or rather, to speak more accurately, limited those powers and restrained their exercise. There is no doubt of the duty of this court to enforce the limitations and restraints whenever they exist, and there has been no hesitation in the performance of the duty. But, whenever a new limitation or restriction is declared, it is a matter of grave import, since, to that extent, it diminishes the authority of the state, so necessary to the perpetuity of our dual form of government, and changes its relation to its people and to the Union."*

So, the Court recognizes an obligation to "enforce the limitations and restraints whenever they exist". This implies that they are addressing both points, mentioned above. First, to determine the extent of the authority (jurisdiction of the state) imposed by the Fourteenth; and, Second, to determine to what extent the first ten amendments convey obligations to the state.

The Court continues:

> *"The defendants contend, in the first place, that the exemption from self incrimination is one of the privileges and immunities of citizens of the United States which the 14th Amendment forbids the states to abridge. It is not argued that the defendants are protected by that part of the 5th Amendment which provides that 'no person . . . shall be compelled in any criminal case to be a witness against himself,' for it is recognized by counsel that, by a long line of decisions, the first ten Amendments are not operative on the states."*

Twining has asserted that he is of the nature of a "citizen of the United States", and, therefore, the state may not abridge those "privileges and immunities". He has declared a status as a "citizen of the United States".

The Court then, referring to a previous case (subsequent to the Fourteenth Amendment), In Re Slaughter-House Cases, 83 U.S. 36 (1872), and citing with the decision of that case, given by Justice Miller, in affirming that there were two classes of citizen.

> *"The 14th Amendment, it is observed by Mr. Justice Miller, delivering the opinion of the court, removed the doubt whether there could be a citizenship of the United States independent of citizenship of the state, by recognizing or creating and defining the former. ' It is quite clear, then,' he proceeds to say, 'that there is a citizenship of the United States and a citizenship of a state, which are distinct from each other and which depend upon different characteristics or circumstances in the individual.*

So, this Court is affirming what the Court decided 34 years prior, in that there are distinct differences between the "citizenship of the United States and a citizenship of a State". One case, shortly after the ratification of the Fourteenth Amendment, and another, three decades later, that affirm the conclusion of just who are "We the People". Can there be any doubt as to the existence of a distinction between the two classes?

The Court, after a lengthy discussion of "due process", concludes:

> *The decisions of this court, though they are silent on the precise question before us [due process], ought to be searched to discover if they present any analogies which are helpful in its decision. The essential elements of due process of law, already established by them, are singularly few, though of wide application and deep significance. We are not here concerned with the effect of due process in restraining substantive laws, as, for example, that which forbids the taking of private property for public use without compensation. We need notice now only those cases which deal with the principles which must be observed in the trial of criminal and civil causes. Due process requires that the court which assumes to determine the rights of parties shall have jurisdiction.*

And, they conclude that the court that has jurisdiction over the parties will prevail in a conflict of interpretation. Since they leave the interpretation to the state court, there must be an absence of federal jurisdiction in the current case. The Court sees Twining and Cornell to be state citizens, therefore, not afforded the" privileges and immunities", meaning that federal jurisdiction fails to include them -- an absence of federal jurisdiction.

In affirming that view, the Court said:

> *"Much might be said in favor of the view that the privilege was guaranteed against state impairment as a privilege and immunity of national citizenship, but, as has been shown, the decisions of this court have foreclosed that view."*

They tighten up on that conclusion, to wit:

> *We do not pass upon the conflict, because, for the reasons given, we think that the exemption from compulsory self-incrimination in the courts of the states* *is not secured by any part of the Federal Constitution.*

Now, this would not be true if the case involved a party of one state against a party from another state, nor would it be true in the extension of "privileges and immunities" conferred by the Fourteenth Amendment, to "citizens of the United States".

So, we can conclude that the "citizen of the United States" is a separate and distinct entity than the citizen of a state. That the jurisdiction of the United States Supreme Court extends only to those who have been brought into jurisdiction by the Constitution (parties of different states, etc.) or by virtue of they being the subjects brought into that jurisdiction by the Fourteenth Amendment.

Now, some will say that this case is over one hundred years old, and things have changed, since then. But, have they? And, if so, how have they been changed? I can find no amendment that changes what is presented here, and must suppose that nothing has been changed.

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Chapter V

In Chapter I, we established what the Supreme Court determined to be "We the People", or, "citizens of the United States", prior to the ratification of the Fourteenth Amendment.

In Chapter II, we saw that the Fourteenth Amendment conferred to those not of "We the People", regardless of prior status, a new class of people who are granted "privileges and immunities", though not the rights inherent with "We the People".

In Chapter III, we see that within a few years of ratification of the 14th Amendment, the Supreme Court confirms that "rights" were not conveyed by that Amendment.

In Chapter IV, we found that the Supreme Court did recognize that there was a difference between a citizen of a state and a citizen of the United States, and that the latter was protected (jurisdiction existed) by the Fourteenth Amendment and to the former, it did not (no jurisdiction).

Now, we will move forward, 56 years, to 1964, to a case that reaffirms the classes of citizen, though begins to erode the protections previously provided to citizens of the United States.

The case is Malloy v. Hogan, 378 U.S. 1, and involves a discussion by the Court of just which Amendments (Bill of Rights) are extended to those who seek protection under the Fourteenth Amendment, when it says:

> "*It was on the authority of that decision that the Court said in 1908 in Twining v. New Jersey, supra, that "it is possible that some of the personal rights safeguarded by the first eight Amendments against National action may also be safeguarded against state action, because a denial of them would be a denial of due process of law."*

So, the question that arose in this case is, to what extent does the Fourteenth Amendment apply to the protection of rights, and, which rights are protected. It redefines what was said in Twining, and requires that any right being protected "*be a denial of the due process of law*". This is a simple paraphrase of "the equal protection of the laws", from the Fourteenth Amendment. So, it simply expands that singular authority to include speech, press, and other rights within the first eight amendments, so long as "due process" can be brought into the equation.

It did not, however, even begin to address anything that would remove, or affect, the nature of the two classes of citizen. They remain unimpaired and intact.

Since the Courts will use a stepping stone process in "revising" laws to a more modern "interpretation", Malloy afforded the Court the opportunity to undermine the distinction between the two classes. However, they chose not to walk upon that sacred ground. Their absence of comment on the two classes leaves that distinction intact.

So, we can see that from Dred Scott (Chapter I), in 1854, the Court established a foundation of this country as being built upon, by, and for, a certain class of people. This is probably best defined by the wording of Justice Taney, in that decision, to wit:

> "*It is true, every person, and every class and description of persons, who were at the time of the adoption of the Constitution recognised as citizens in the several States, became also citizens of this new political body; but none other; it was formed by them, and for them and their posterity,* ***but for no one else*** *and privileges guaranteed to citizens of this new sovereignty were intended to embrace* ***those only*** *who were then members of the several State communities, or who should afterwards by birthright or otherwise become members, according to the provisions of the* ***Constitution*** *and the* ***principles*** *on which it was founded. It was the union of those who were at that time members of distinct and separate political communities into one political family, whose power, for certain specified purposes, was to extend over the whole territory of the United States. And it gave to each citizen* ***rights*** *and privileges outside of his State which he did not before possess, and placed him in every other State upon a perfect equality with its own citizens as to* ***rights*** *of person and* ***rights*** *of property; it made him a citizen of the United States.*

For the sake of discussion, this sacred class (within the United States) shall be referred to as "We the People". But, perhaps, we should endeavor, with a bit more precision, to define just what/who those "We the People" were/are, in light of what Justice Taney said.

After much thought, I can only come up with three possibilities that might shed light on Taney's description of that class known as "We the People".

1. That it would include only those who are defined by the rather common acronym, "WASP", meaning "White Anglo-Saxon Protestant". When we consider that in the Seventeenth and Eighteenth Centuries, Jews were not allowed to reside in some of the colonies; that loathing of Catholics (Popists) was common through most of the colonies, during that period, more effectually demonstrated by the objection to the Quebec Act of 1774, allowing Catholics to vote and hold office in Canada, are indicative of the sympathies of the times;
2. Caucasians of European descent, which would include perhaps 99% of those who had immigrated to the colonies to begin life, anew; or,
3. Those of Indo-European language groups (first defined in 1647 and including English, Dutch, Greek, Latin, Persian, German, Slavic, Celtic and Baltic languages), thus having a common heritage and culture, at least in the distant past.

There is no way that we can interpret, from what Justice Taney said, just who "We the People" were, though it is clear by the context of his description that it would include those above described peoples, or combinations thereof, "***but for no one else.***

Then, the Fourteenth Amendment was ratified and granted citizenship to people who were not of this class, "We the People". Further, it granted then only privileges and immunities. It did not grant them rights.

This position (distinction between classes) is further supported by the ratification of the 15th Amendment (granting the **right** of suffrage (voting), regardless of "race, color, or previous condition of servitude".

Then, in 1874, the Court, in Happersett (Chapter IV), made clear that the Fourteenth Amendment did not convey rights. However, the Constitution makes clear that there are rights retained by the people (We the People), so since there cannot be conflict between the Constitution and an AMENDMENT (unless expressly resolved in the amendment), the distinction is further enhanced.

So, for all intents and purposes, there are four classes of people in this country, today:

- "We the People", those descended from the Framers, or otherwise within the principles of the original Constitution, who have retained their rights;
- Those made citizens by the Fourteenth Amendment, with the privileges and immunities granted therein, and any rights specifically bestowed, by subsequent amendments;
- Those who are here, lawfully and in accordance with all laws, as visitors, and who have not violated any conditions of the permission granted to visit; and,
- Those who are here unlawfully, that have entered in violation of our laws or have violated the conditions of their permissive visitation.

The foundation of this country, then, rests upon an understanding that the purpose of the Constitution, and the country, is to provide a home for those of the class, "We the People". That others who choose to assimilate into the American Culture do so with that understanding, and the understanding that they are the beneficiaries of all privileges and immunities, though only those rights specifically granted.

It can also be concluded that any who have designs contrary to the support and continuation of the United States, as intended by the Framers, and described herein, are inconsistent with the purpose of the country, and, as such, are against the Constitution and should be deemed unacceptable and unwanted visitors.

If the United States is to return to its former stature as the beacon to the world of freed enterprise by a free people, we must return, also, to the concept that allowed such concepts of freedom to prosper, and grow, in a rather short history, to what it had become by the end of the Nineteenth Century.

It can return to that stature only if we do return to those principles that made this nation great. Absent a dedication to that purpose, we are destined to be nothing more than a footnote in history. And, that will be our rightful place, if we fail to act to secure that which we hold so dear.

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