*Law and History Review* (2024), **42**, 649–658
doi:10.1017/S0738248024000361

ASLH AMERICAN SOCIETY FOR LEGAL HISTORY
CAMBRIDGE UNIVERSITY PRESS

ORIGINAL ARTICLE

# Sources and U. S. Citizenship in the Antebellum United States: A View from Abroad

M. Scott Heerman

Department of History, University of Miami, Coral Gables, FL, USA
Email: msh124@miami.edu

## Abstract

This article republishes a series of documents concerning citizenship rights for African Americans who were abroad. Twice during the 1850s the U.S. Secretary of State (William L. Marcy) issued instructions to consuls where he spelled out the relationship between race and citizenship for individuals who were beyond the borders of the United States. Because citizenship was not clearly defined the antebellum period, either in law or practice, the Secretary's guidance offers an important set of documents that scholars from a variety of fields can incorporate into their scholarship and teaching.

Who is a citizen of the United States, and what does it mean to attain that status? In the antebellum era, the connections between race and citizenship generated hotly contested political and legal controversies around those very questions. African Americans faced many exclusions from citizenship, which gave race part of its meaning, and they contested those barriers to belonging across the long arc of U.S. history. Before the Civil War, race and citizenship generated such enormous debate in part because citizenship had no clear definition in law or in practice.[1] Citizenship existed at both the state and national

[1] William J. Novak, "The Legal Transformation of Citizenship in Nineteenth-Century America," in *The Democratic Experiment: New Directions in American Political History*, eds. William J. Novak, Meg Jacobs, and Julian E. Zelizer (Princeton: Princeton University Press, 2003), 85–119. Many others have built on this analysis including Derrick Ramon Spires, *The Practice of Citizenship: Black Politics and Print Culture in the Early United States* (Philadelphia: University of Pennsylvania Press, 2019); Stephen David Kantrowitz, *More Than Freedom: Fighting for Black Citizenship in a White Republic* (New York: Penguin, 2012), Kate Masur, *Until Justice be Done: America's First Civil Rights Movement, from the Revolution to Reconstruction* (New York: Norton, 2020); Martha Jones, *Birthright Citizens: a History of Race and Rights in Antebellum America* (New York: Cambridge University Press, 2018); Christopher James Bonner, *Remaking the Republic: Black Politics and the Creation of American*

level, and there was no simple answer to how a person's status in one arena shaped their rights in another. Moreover, there was more than one way access citizenship, including through birthright and through a naturalization process afforded to white immigrants. Further complicating matters, certain rights and legal protections existed for all persons, such as due process protections enumerated in the fifth amendment.[2] For much of the antebellum era, jurists did not precisely spell out the differences between the rights afforded to all free persons, those restricted to citizens, and how belonging as a citizen of a state shaped citizenship in the wider nation. Uncertainty hovered over the debate for decades, with African American leaders navigating this murky terrain in search of greater rights, and their many adversaries relying on citizenship's ill-defined parameters to deny a host of protections for African Americans.

Within this complex and interlocking landscape, citizenship was largely, but not exclusively, a matter for the states. The national government only rarely acted directly on people, such as with the rendition of people alleged to be runaway slaves. Instead, the various states each had their own set of policies that gave citizenship its meaning, and provisions of the Constitution required the states to recognize each other's citizenship.[3] Within their borders, state legislatures had considerable authority, called police powers, to control people and their affairs. Those powers included regulating ports, setting out due process provisions, controlling migration and issuing passports, and implementing residency restrictions that required African Americans to register proof of their freedom at local courthouses.[4] Each state had its own regime of citizenship, and its own set of restrictions on African American rights. Some state constitutions expressly recognized African American citizenship, but not on equal terms. For instance, New York's state constitution made free African Americans citizens, but after 1821 it subjected Black men's voting rights to a property requirement not in place for white men.[5] If some states affirmed

*Citizenship* (Philadelphia: University of Pennsylvania Press, 2020); Barbara Young Welke, *Law and the Borders of Belonging in the Long Nineteenth Century United States* (New York, 2010); Christian G. Samito, *Becoming American Under Fire: Irish Americans, African Americans, and the Politics of Citizenship During the Civil War Era* (Ithaca: Cornell University Press, 2009). The classic work remains James Kettner, *The Development of American Citizenship, 1608–1870* (Chapel Hill: University of North Carolina Press, 1978).

[2] Masur, *Until Justice be Done*, 44–45.

[3] As one scholar summarized it: "To the extent that there was a link between U.S. citizenship and rights at all, it was at the state level, where there was a concept of state citizenship, which did establish claims to rights, as defined within states." Laura F. Edwards, "Reconstruction and the History of Governance," in *The World the Civil War Made*, eds. Kate Masur and Gregory P. Downs (Chapel Hill: University of North Carolina Press, 2015), 30. See also Kunal Parker, *Making Foreigners: Immigration and Citizenship Law in America, 1600–2000* (New York: Cambridge University Press), 81–116.

[4] Masur, *Until Justice be Done*, 16–19, 24–31; Samantha Seeley, *Race, Removal, and the Right to Remain: Migration and the Making of the United States* (Chapel Hill: University of North Carolina Press, 2021), 209–44; Elizabeth Stordeur Pryor, *Colored Travelers: Mobility and the Fight for Citizenship Before the Civil War* (Chapel Hill: The University of North Carolina Press, 2016), 110–11.

[5] Sarah L. H. Gronningsater, *The Rising Generation: Gradual Abolition, Black Legal Culture, and the Making of National Freedom* (Philadelphia: University of Pennsylvania Press, 2024), 128–66;

https://doi.org/10.1017/S0738248024000361 Published online by Cambridge University Press

African American citizenship, it was not the norm. Instead state legislatures used their powers to enact a host of provisions that made the lack of African American citizenship painfully apparent. They varied by state and by region but they included migration and mobility restrictions, registration requirements, residency limitations, and limits on due process, such as denying the right to testify in court.[6]

Before the 1860s, officials at the national level only occasionally weighed in on questions of African American citizenship making their rare opinions all the more significant. When cabinet officials tackled the thorny question of citizenship over the antebellum years, the prevailing thinking denied citizenship status for African Americans, but that was not a unanimous opinion. In the first decades after U.S. Independence, the Congress created a system for protecting sailors from impressment by issuing certificates which were an early form of citizenship papers.[7] African Americans could access these certificates on the same terms as other individuals, a point that James Monroe made explicit while he was Secretary of State.[8] If this ruling from a cabinet secretary seemed to hint that in certain contexts African Americans could claim the protections of national citizenship, other legal opinions foreclosed that possibility. In 1821 William Writ, then U.S. Attorney General, issued a memo that categorically denied Black citizenship. Over several pages he asserted that citizenship extended to "those only who enjoyed the full and equal privileges of white citizens in the State of their residence." This opinion came amid a national firestorm over the Missouri state constitution which sought to forbid free Black settlement in the state. Many Northern legislators contended that because African Americans were citizens of one state, they could not be treated as aliens in another by terms of Article IV, Section 2 of the U.S. constitutions, known as the Privileges and Immunity Clause.[9] As those debates played out over years, other Attorneys General built on Wirt's analysis to disallow this interpretation

Nicholas P. Wood, "A "Class of Citizens": The Earliest Black Petitioners to Congress and Their Quaker Allies," *The William and Mary Quarterly* 74, no. 1 (2017): 109–44; Parker, *Making Foreigners*, 45–46;

[6] Michael A. Schoeppner, "Black Migrants and Border Regulation in the Early United States," *Journal of the Civil War Era* 11, no. 3 (2021): 317–39 ; Lucy E. Salyer, "Reconstructing the Immigrant: The Naturalization Act of 1870 in Global Perspective," *Journal of the Civil War Era* 11 no. 3 (2021): 385; Kevin Kenny, *The Problem of Immigration in a Slaveholding Republic: Policing Mobility in the 19th-Century United States* (New York: Oxford University Press, 2023), 126; Anna O. Law, "Lunatics, Idiots, Paupers, and Negro Seamen—immigration Federalism and the Early American State," *Studies in American Political Development* 28, no. 2 (2014): 107–28.

[7] Nathan Perl-Rosenthal, *Citizen Sailor: Becoming American in the Age of Revolution* (Cambridge: Harvard University Press, 2015), 10–12.

[8] Perl-Rosenthal, *Citizen Sailor*, 224–25. See James Monroe to Duplessis, November 15, 1815, Domestic Letters M40, p. 267, Department of State Central Files, RG 59, National Archives and Records Administration, College Park, MD.

[9] John Craig Hammond, "President, Planter, Politician: James Monroe, the Missouri Crisis, and the Politics of Slavery," *Journal of American History* 105, no. 4 (March 2019): 843–67; Matthew Mason, "The Maine and Missouri Crisis: Competing Priorities and Northern Slavery Politics in the Early Republic," *Journal of the Early Republic* 33, no. 4 (2013): 675–700; Alice Baumgartner, *South to Freedom: Runaway Slaves to Mexico and the Road to the Civil War* (New York: Norton, 2020), esp., 217–19; Masur, *Until Justice Be Done*, 52–59.

https://doi.org/10.1017/S0738248024000361 Published online by Cambridge University Press

and contend that African Americans were "not citizens of the United States."[10] In 1832, Roger Taney affirmed the power of the South Carolina legislature to detain Black sailors arriving in port, giving broad protections to the so-called Negro Seamen Acts that, by the end of the antebellum years, would be in force across seven other southern states.[11] For its part, the U.S. Congress occasionally debated African American citizenship without coming to any clear resolution or extending citizenship rights to African Americans.[12]

Even if a consensus around Black citizenship never emerged, a trend toward greater restriction existed. By the 1850s, a new set of provisions reshaped the laws that constrained Black citizenship and fostered a new set of opinions at the national level. First, the 1850 Fugitive Slave Law gave national jurisdiction to the rendition of suspected runaway slaves, and it expressly denied African Americans due-process protections, such as the right to testify on their behalf or to seek a *writ of habeus corpus*.[13] Second, the Secretary of State restricted African American's access to passports, holding that they could not be treated as citizens of the United States. The Congress had given the State Department exclusive authority to issue travel papers in 1856.[14] While the documents were not uniformly needed or all that commonly issued, issuing passports became a test of Black citizenship at the national level, and a new barrier to full belonging.[15] The restrictions on Black citizenship multiplied as the decade went on, most notoriously when the U.S. Supreme Court issued a ruling forbidding African Americans citizenship status. In words that have echoed into the present, the 1857 majority opinion in *Scott v. Sanford* declared that African Americans "had no rights which the white man was bound to respect."[16]

Given how rare it was for cabinet officials to weigh in on questions of race and citizenship at the national level, every instance carried outsized importance. Two of the documents included below represent new sources to join this conversation. They indicate that questions of race and citizenship played out on an international stage and in the realm of U.S. consular activity. Across the antebellum years, African Americans sought out consular protection

[10] William Wirt, "Rights of Free Virginia Negroes," November 7, 1821, *Official Opinions of the Attorney General of the United States* vol. 1 (Washington: Government Printing Office, 1852), 506–9. Quotations at p. 507 (those only) and 509 (not citizens).

[11] Michael Schoeppner, *Moral Contagion: Black Atlantic Sailors, Citizenship, and Diplomacy in Antebellum America* (New York: Cambridge University Press, 2019).

[12] This paragraph summarizes the analysis of the 1821 opinion and congressional debates in Martha S. Jones, "Birthright Citizenship and Reconstruction's Unfinished Revolution," *Journal of the Civil War Era* online forum on the future of Reconstruction, https://www.journalofthecivilwarera.org/forum-the-future-of-reconstruction-studies/birthright-citizenship-reconstructions-unfinished-revolution/ (accessed September 19, 2024).

[13] Richard. J. M. Blackett, *The Captive's Quest for Freedom: Fugitive Slaves, the 1850 Fugitive Slave Law, and the Politics of Slavery* (New York: Cambridge University Press, 2017).

[14] Craig Robertson, *The Passport in America: The History of a Document* (New York: Oxford University Press, 2012), 126–28. See also John Torpey, *The Invention of the Passport: Surveillance, Citizenship and the State* (New York: Cambridge University Press, 1999).

[15] Pryor, *Colored Travelers*, 103–25; Edlie Wong, *Neither Fugitive Nor Free: Atlantic Slavery, Freedom Suits, and the Legal Culture of Travel* (New York: NYU Press, 2009), 252–55.

[16] *Dred Scott v. John F. A. Sanford*, 30 US 393 (1857) at Page 60 U.S. 407.

https://doi.org/10.1017/S0738248024000361 Published online by Cambridge University Press

which in turn provoked questions about their status when beyond the nation's borders. In 1856, the Secretary of State, William Marcy, issued two sets of instructions on consular protection, which are transcribed below. Marcy led the State Department from 1853 until his death in July 1857. Born in Massachusetts, and educated at Brown University, he rose to prominence as a veteran of the War of 1812 and a lawyer in upstate New York. He served as Senator from New York (1831–1833) and next won the governorship of the state (1833–1838). For the remainder of his life, he held cabinet posts serving as Secretary of War (1845–1849) and ultimately ending his career in office at the State Department.[17]

Until this point, historians have not incorporated Marcy's letters within the small handful of instances when cabinet officials discussed race and citizenship at the national level. This is partly because the letters have not yet been digitized or microfilmed, meaning access to them is only possible by consulting the original documents in the reading room at the U.S. National Archives.[18] Read together these two letters shed new light on the nature of racial exclusion in the antebellum U.S. They open up new questions about the international dimensions of African American citizenship, and how that related to the story of exclusion playing out in domestic settings.

Although the letters can have potentially broad implications, they emerged out of a specific context and reflect a conversation about State Department policy. The directions on consular protection came amid a series of inquiries coming from officials in Mexico which have recieved expert scholarly attention.[19] Their analysis, summarized here, provides context for Marcy's letters below.

Documents 1–3 below follow a conversation about consular assistance. Given that no high-ranking cabinet or judicial official had ever expressly affirmed that African Americans could be citizens of the United States, it was not clear to certain consuls if they could intercede on behalf of African Americans in distress. During the middle decades of the nineteenth century, the Mexican government required foreigners to register annually and to receive residency documents known as *cartas de seguridad*. Consuls often assisted in helping individuals secure *cartas* by documenting their nationality and vouching for their good character. By 1854, some consuls asked if they should provide these services for African Americans abroad. In Document 1 below, William Barry, Consul at Matamoros, wrote his superiors for guidance. Document 2 below is the reply he received from the U.S. Minister in Mexico, James Gadsden. Document 3 is the instruction from the U.S. Secretary of State, William L. Marcy.

As Documents 4 and 5 below indicate, questions of consular authority extended beyond the issue of *cartas*. In several instances, African Americans

[17] Death of William Marcy *New York Times*, July 6, 1857.

[18] Personal E-mail Correspondence with Eric Van Slander, Archivist, National Archives and Records Administration, College Park, MD, February 14, 2024.

[19] For more on these cases and the larger policy debates see Sarah E. Cornell, "Citizens of Nowhere: Fugitive Slaves and Free African Americans in Mexico, 1833–1857," *Journal of American History* 100, no. 2 (September 2013): 351–74; Baumgartner, *South to Freedom*, 203–12.

https://doi.org/10.1017/S0738248024000361 Published online by Cambridge University Press

in distress applied for consular protection, and the U.S. officials had to determine if they were entitled to it. In Document 4, the U.S. Consul at Minatitlan wrote the Secretary seeking guidance on extending consular protection. In Document 5 he received an answer from the Secretary with similar instructions: to extend consular authority but not to affirm standing as a citizen of the United States.

Marcy's letters are short, but they can have meaningful impact on the wider discussions scholars have about antebellum citizenship. They are part of a very small but critical collection of records where national officials spelled out the exclusions to African American citizenship before the Civil War. They therefore can deepen our understanding of how ideas about racial difference shaped U.S. history, and the international contexts in which racial exclusion took shape.

**(1)**

*William Barry to William Marcy, November 25, 1854*[20]

No. 3.
Consulate of the U.S.A.
Matamoros, Nov. 25th 1854
Hon. Wm L Marcy
Secretary of State
Washington City, D.C.

Sir;

By the existing laws of Mexico all American citizens, as well as other foreigners residing in the country, are required to provide themselves with Cartas de Seguridad to legalize their residence; the renewal of which is particularly enjoined in the month of January in each succeeding year. As the time is approaching for the re-issue of those documents, and as doubts have been suggested whether free persons of color coming from the U.S. and claiming to be American citizens, are entitled to our protection in such cases; I therefore, beg leave to ask for information on the subject. At the same time I deem it my duty to remark, that my predecessors have heretofore extended protection to this class of people, when found worthy and could produce evidence of their freedom and place of birth. I beg to refer you to Mr Ellis's despatch to Mr Forsyth dated Sept. 21st, 1839[21] upon this subject; and also, to the enclosed exact copy of Mr Gadsden,s circular to U.S. Consuls in Mexico. This latter document seems to be inconsistent with the other, and rather obscure in reference to the matter about which I seek information[.]

[20] Despatches from United States Consuls in Matamoros, 1826–1906, M281, reel 2, Department of State Central Files, Record Group 59, National Archives and Records Administration, College Park, MD.

[21] Powhatan Ellis to John Forsyth, September 21, 1839, Despatches from United States Ministers to Mexico, 1823–1906, M 97, reel 10, Department of State Central Files, Record Group 59, National Archives and Records Administration, College Park, MD.

https://doi.org/10.1017/S0738248024000361 Published online by Cambridge University Press

Tranquility prevails in this quarter[.]

I have the honor to be,
with great respect, sir,
Your most obedien[t servant,]
Thomas Dirgan
U. S. V. Consul

**(2)**

*Instructions from the U.S. Minister in Mexico, 1854*[22]

Legation of the U.S.
Mexico June 28, 1854.

Circular
To Consuls of the U. States acting under Exequiturs in the Republic of Mexico.

The Exactions on the part of Mexico, of Cartas de Seguridad from all Foreign Citizens, claiming residence and in pursuit of their vocations. The Passports which are expected to accompany these evidences of citizenship: and the liberality with which a Consular guarantee of that Relation is accorded to Individuals claiming the protection of the United States abroad; may become a fruitful source of vexatious issues; only to be avoided by the discretion exercised hereafter in the recognition of the American citizen.

The obligation "to see that no such hand of power: or tyrannical passion is laid upon an American citizen with impunity; where his enterprise may rightfully seek the protection of our flag."[23] is acknowledged to its full extent at this Legation; and no occasion can escape the vigilance of Consuls and Minister, in promptly respecting it. That obligation however is greatly weakened in its influence to the legitimate citizen; when a just discrimination is not made between those who, may lawfully claim protection, and those who seek abroad what would not be acknowledged at home. There are a large number of this caste, and who are increasing to a fearful extent; over whom the shield of American protection has been imprudently extended, and which ere long, may embroil the two Countries, if those whose responsibilities are to preserve peace and neighborhood harmony do not promptly apply the corrective. I allude to the Africans who are flocking in numbers from the United States to Mexico: and who are as unwelcome

[22] Despatches from United States Consuls in Matamoros, 1826–1906, M281, reel 2, Department of State Central Files, Record Group 59, National Archives and Records Administration, College Park, MD. Copies of this circular appear in other consular collections, and it appears to have circulated widely.

[23] Gadsden is quoting here from President Franklin Pierce's inaugural address, delivered on March 4, 1853. See "Inaugural Address of Franklin Pierce," Avalon Project at Yale Law School, Lillian Goldman Law Library. https://avalon.law.yale.edu/19th_century/pierce.asp (accessed September 19, 2024).

https://doi.org/10.1017/S0738248024000361 Published online by Cambridge University Press

Emigrants: as are the same caste to the more Northern States of our Federation. They are not recognized as Citizens at home and cannot claim abroad what would be denied to them in the States from where they have absconded; or voluntarily departed, to seek the protection of a Foreign Government. The undersigned has therefore felt the obligation of this Circular to caution American Consuls, for the future, from certifying to the Citizenship of Africans of whatever caste who may report from the United States, in search of new homes in Mexico, as they cannot be acknowledged at this Legation as Citizens of the United States.

Respectfully
(signed) James Gadsden

**(3)**

*William Marcy to William Barry, January 8, 1855*[24]

Department of State,
Washington, January 8th, 1855.
William B. Barry, Esquire,
United States Consul,
Matamoros.

Sir.

I have to acknowledge the receipt of your Agent's despatches from Nº 1 to Nº 5 inclusive, and to state in reply to the enquiry contained in his Nº 3. that inasmuch as persons of African extraction residing within the United States, have been held by high judicial authority not to be Citizens of the said States, it is conceived that they cannot be regarded beyond the jurisdiction of this Government as entitled to the full rights of citizens.

You cannot give such persons certificates that they are citizens of the United States, yet being born therein they have rights which this Government under certain circumstances would feel bound to look to and protect if violated by a foreign Government.

By the laws of several States they are citizens thereof. Should they engage in foreign commerce for instance, the United States would interpose in their behalf if unjustly deprived of their property or if their personal rights were infringed.

If such persons who are free—a fact which you should be careful to ascertain—and of respectable character should apply to you for protection they would be entitled to your assistance: though you could not certify that they were citizens of the United States, you could and I think you should certify—if satisfied of its truth, that they were born in the United States, are

[24] Consular Instructions, 1800–1906, Entry A1 59, Vol. 20, General Records of the Department of State, Record Group 59, National Archives and Records Administration, College Park, MD.

https://doi.org/10.1017/S0738248024000361 Published online by Cambridge University Press

free, and that the Government thereof would regard it to be its duty to protect them if wronged by a foreign Government while within its jurisdiction for a legal and proper purpose.

I am, Sir, respectfully,
Your obedient servant.
W. L. Marcy.

**(4)**

*A. C. Allen to William Marcy, December 19, 1854*[25]

Consulate of the U States
Minatitlan Decm 19th 1854
Hon Wm L. Marcy
Secty of State
Washington City

Sir

Having seen at Vera-Cruz a circular addressed to that Consulate by the American Minister resident at Mexico, in which he denies the propriety of protection to American free Negroes abroad; and also having been asked by an American black man by the name of Ed[war]d Wright, a resident of this district, if I would give him protection as an American citizen, I replyed to him that having seen such a circular above alluded to, although not directed to this Consulate, I was not prepared to give him an answer, but would write to the Department of State for information[.] It appears to me that American collored seamen, who are free, require the protection of the American Government abroad, but with regard to those collored persons who are not seamen, whether or not they are entitled to protection, I wish your opinion that I may be governed accordingly, as there may be cases arising in which my intervention may be required.

I have the honor to be
Respectfully Yours &c.,
A. G. Allen
Consul

[25] Despatches from United States Consuls in Minatitlan, 1853–1881, M281, reel 1, Department of State Central Files, Record Group 59, National Archives and Records Administration, College Park, MD.

https://doi.org/10.1017/S0738248024000361 Published online by Cambridge University Press

**(5)**

*William Marcy to James A. Pleasants, February 6, 1855*[26]

Department of State
Washington, February 6th 1855.
James A. Pleasants, Esquire,
United States Consul, Minatitlan.

Sir,

Your Agent's despatches dated December 19th, and January 1st, the latter numbered 10, the former not numbered, have been received.

In answer to the enquiry contained in his despatch of 19th Dec[embe]r respecting the propriety of affording protection to American free negroes abroad, I have to refer you to the enclosed copy of a letter addressed on the 8th ultimo, to the United States Consul at Matamoros, from which you will see that free persons of African extraction, born in the United States and temporarily residing abroad, are regarded as possessing certain rights which this Government would feel bound to look to and protect, if violated by a foreign Government, and although you cannot certify that they are citizens of the United States, you could, and should grant them certificates of the nature set forth therein.

I am, Sir, respectfully,
Your obedient servant,
W. L. Marcy.

**Acknowledgments.** Michael Bernath, Sarah Gronningsater, Leslie Rowland, Kimberly Welch, and the anonymous readers at this journal provided comments that improved this piece. Cate Brennan and Eric Van Slander provided expert archival guidance. Funding for this research came from the McNeil Center for Early American Studies at the University of Pennsylvania and the Arts and Humanities Fellowship from the University of Miami.

**M. Scott Heerman** is associate professor of History at the University of Miami <msh124@miami.edu>.

[26] Consular Instructions, 1800–1906, Entry A1 59, Vol. 20, General Records of the Department of State, Record Group 59, National Archives and Records Administration, College Park, MD.

**Cite this article:** M. Scott Heerman, "Sources and U. S. Citizenship in the Antebellum United States: A View from Abroad," *Law and History Review* 42 (2024): 649–658. https://doi.org/10.1017/S0738248024000361