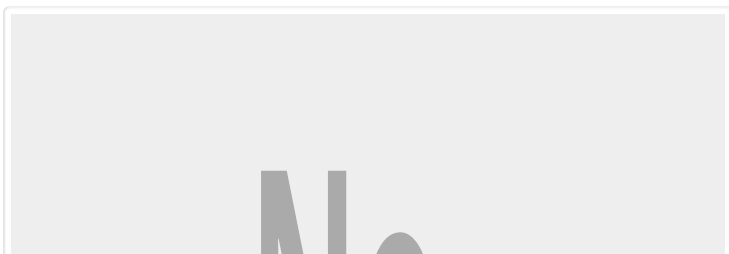


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A History of the Person in America Before the Civil War



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Abstract

This dissertation excavates the intellectual origins of the legal idea of a person and traces its expression in American politics from the settlement of New England through the eve of the American Civil War. Using statutes, law books, sermons, records of debates, reports of cases, and works of political theory, this study argues that so far from distilling the highest hopes of freedom, the idea of a person admitted of—and was perhaps most ably characterized by—the idea of a slave. Chapter one revisits the writings of seventeenth-century Puritans in the Massachusetts Bay Colony and demonstrates that by 1641, both a voice in government and licit enslavement depended not on what was due to the governed, but on an inscrutable gift from the free to an elect. The second chapter, reaching back to pagan antiquity, places William Blackstone's 1765 Commentaries on the Laws of England in a new light, investigating the transmission of Roman renderings of persons (personas) into the free and the enslaved, and justice (iustitia) as "the constant and perpetual will to give to each his ius," down to a thirteenth-century English law book known as Bracton. Blackstone, driving a wedge between his own work and Bracton, wrote not that persons were the reason for all rights, but that rights were the end of laws, which led him to divide his own commentaries into two books: *Of the Rights of Persons* and *Of the Rights of Things*. The notion of a "person," however, did not make it into the Declaration of Independence in 1776 because delegates in General Congress swept it away with the clause in Thomas Jefferson's rough draft specifying the Atlantic slave trade as a grievance against the king, and this remarkable excision is the focus of chapter three. Denied security in unalienable rights, the enslaved assumed the shape of what Blackstone had called "artificial persons" whose every need was the occasion for rulers to grant or withhold the object. Chapter four argues that in 1787, when the men who drafted the U.S. Constitution identified the enslaved as objects of governance and counted them for the purpose of political representation while denying them a share of sovereign power, they established a government shaped to abandon the enslaved to the caprice of the free, internalizing the violence required to keep property rights in persons safe. Ending the dissertation with a return to gifts to an elect, the final chapter examines Chief Justice Roger Taney's opinion in *Dred Scott v. Sandford* (1857). Taney declared that "negro[e]s[s]", whose ancestors were imported into this country, and sold as slaves" were "persons," but not "people," who had never been "supposed to possess any political rights which the dominant race might not withhold or grant at their pleasure." Rightly maligned as the most repugnant Supreme Court decision in American history, Taney's opinion nevertheless rested on the centuries-long endurance of a division of persons into the free and the enslaved, and, in turn, bore compelling witness to a heritage in which it was not security in rights, but the profound vulnerability wrought by their distribution, that captured what it was to be a person in America before the Civil War.

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