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The Courts and Human Rights in New York: The Legacy of the Lemmon Slave Case.

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Since the creation of the United States, New York has been an advocate for human rights in a nation where slavery was protected by the Constitution.

In 1785, a bill for the immediate abolition of slavery passed in the Legislature, but failed in the Council of Revision as the Assembly insisted on a provision denying freed slaves the right to vote (Gordan, III, 2006, p. 9). Just three years later, in 1788, the Legislature passed " An Act Concerning Slaves" which prohibited the sale of slaves brought into or exported from New York, punishable by one hundred pounds per offense as well as declaring those slaves imported shall be free (Du Bois, 1896/1970, p 1). Eleven years later a statute guaranteed eventual freedom to all children born slaves after July 4, 1799 and provided a mechanism for immediate manumission of slaves.

After several more enactments, New York recognized slave marriages, and the right of slaves to own property, and protected them against forced expatriation. The Legislature provided for the emancipation of slaves born prior to 1799, and allowed non-residents to enter New York with their slaves for up to nine months. In 1841, New York repealed the portion of the statute allowing non-residents to enter with slaves, thereby becoming an entirely slave-free state (Gordan, III, 2006, p. 9).

Perhaps New York's greatest stand against slavery came in 1860 when in *Lemmon v People* (commonly known as the Lemmon Slave Case) the New York Court of Appeals made its pivotal stand for human rights, renouncing the then recently decided *Dred Scott* decision of the Supreme Court of the United States.

The Lemmon Slave Case was a legal effort to free slaves brought to New York where slavery was illegal. Eight slaves (one man, two women, two infants and three older children) were in route to Texas from Virginia with their owners, Jonathan and Juliet Lemmon, when they stopped at New York Harbor to make a steamship connection, and stayed in a boarding house for the night. Louis Napoleon, a free black man, discovered the slaves on November 8, 1852 and petitioned for a writ of habeas corpus before Justice Elijah Paine of the Superior Court of the City of New York. Justice Paine granted the writ of habeas corpus, and the slaves were brought before the court the next day with Erastus Culver and John Jay as their counsel (Gordan, III, 2006, p. 9).

The next day at the hearing, Jonathan Lemmon claimed that the slaves were his wife's inherited property under the laws of Virginia and that, pursuant to the Privileges and Immunities Clause, they had the right to pass through New York with their slaves without the risk of them suing for their freedom. The Lemmons claimed that they were simply in New York to board another steamship in transit to Texas, another state that would recognize their slaves as personal property. Thus, they claimed, they were additionally protected by the Law of Nations, which allows the transportation of goods in possession of their owner. Justice Paine decided four days later that New York, by legislative enactment in 1841, had abolished slavery within the State in all forms and under all circumstances. The Privileges and Immunities Clause only gave the Lemmons the rights of the citizens of New York; thus, when they brought their slaves into New York, the slaves automatically were emancipated under the law. Finally, Justice Paine ruled that the Law of Nations analogy would not apply to the case, as slaves were not goods under the Law of Nations (Gordan, III, 2006, p. 10).

When Justice Paine held that Jonathan Lemmon's slaves should be set free, it caused uproar in the south. The Virginia Legislature directed its attorney general to appeal the decision, and on November 19, 1852, H.D. Lapaugh applied for a writ of certiorari to review Justice Paine's decision, which the Governors of Georgia and Virginia denounced (Gordan, III, 2006, p 10). The Virginia General Assembly set aside money to retain counsel in New York to obtain a reversal in the case. In 1855, the New York Legislature also appropriated money for counsel, except its motive was to affirm Justice Paine's ruling. Now a case that originally was argued by lawyers for individuals was being argued by the State of New York, in furtherance of human rights for slaves, and the Commonwealth of Virginia, in furtherance of its belief that slaves were property and not subject to rights accorded to citizens of any state.

While Virginia and New York were occupied with obtaining counsel and while the appeal was being perfected, the Supreme Court of the United States was hearing another case with equal, if not paramount, importance.

Dred Scott was a slave purchased in Missouri and taken by his owner to live at Fort Armstrong in Illinois, a free state. Scott was then brought to live at Fort Snelling in Minnesota, another state where slavery was prohibited by the Missouri Compromise, before returning to live in Missouri where his owner died. Scott sued his owner's widow in Missouri courts on the grounds that he was emancipated by having lived in Illinois and in Minnesota. The Missouri Supreme Court ruled that Scott was still and had always been a slave, overruling its own precedent which squarely favored Scott. After slave ownership was transferred to John Sanford, the widow's brother, Scott brought a new federal suit and eventually applied to the United States

Supreme Court for review.

The March 6, 1857 decision had an enormous impact as the Supreme Court affirmed seven-to-two that Scott was still a slave. The Court decided that Scott's status was governed by the law of the state where he was purchased, in his case Missouri where slavery was legal. Chief Justice Taney, joined by two other justices, went much further to say that slaves and their descendants, whether slave or free, could never be citizens of the United States and could never sue in America's courts. Chief Justice Taney's opinion also deemed the 1820 Missouri Compromise unconstitutional, thus effectively allowing slavery in all territories of the United States (Gordan, III, 2006 p.10).

This one case had an enormous impact as it sent a message to America stating that slavery was legal, even in so-called "free" states. The Supreme Court also sent a message to slaves and freed blacks alike, stating they are not, and could never be, citizens of the United States, and therefore could not use our court systems.

New York's reaction to the Dred Scott case was swift as a joint committee of the Senate and the Assembly, led by Samuel A. Foot, a former New York Court of Appeals Judge, condemned the decision on April 7, 1857 and stated: "That New York would not allow slavery within her borders, in any form or under any pretence or for any time." (Gordan, III, 2006, p. 11)

Finally, five years it began, the Lemmon Slave case appeal was to be heard in the General Term of the New York Supreme Court before five justices. New York had retained William M. Evarts, a great advocate at the New York bar. Virginia retained Evarts's rival Charles O'Conor, who had pro-southern and pro-slavery leanings. O'Conor placed his emphasis on the Commerce Clause of the United States Constitution, which lead to predictions that the slave trade would resume in New York; however, New York had other plans. The court held "that the holding of slaves in this state, for any purpose is as injurious to our condition and to the public peace, as it is opposed to the sentiment of the people of this state." (26 Barb 270, 289). The court upheld Justice Paine's decision reasoning that the Legislature had intended to exclude slavery completely from the state. The Court also held that the act of setting the slaves free was a valid exercise of state police power, and slavery was a matter for state regulation. The Court held that interstate commerce was not implicated as the Lemmons' trip ended in New York when the writ was taken out. Virginia, on behalf of Mrs. Lemmon, filed another appeal on January 4, 1858 (Gordan, III, 2006, p.11).

Charles O'Conor continued as the retained counsel for the Lemmons, though in actuality he was

representing the state of Virginia. In the Lemmon case's final appeal, O'Conor argued that slavery brought blessings to its "inferior" and "dependent" victims. He also argued -- with the recently decided Dred Scott case as the basis for the argument -- that slavery conflicted with neither law nor natural justice. William M. Evarts's arguments were more measured and to the point. Evarts relied on earlier Supreme Court decisions to support the proposition that slavery was a matter for the law of each state. The Privileges and Immunities Clause was used again to illustrate that the privileges and immunities accorded to the Lemmons were the same as those accorded to citizens of New York (Gordon, III, 2006, p.12).

By a five-to-three vote, the Court of Appeals affirmed, ending slavery in New York State for good. Judge Denio predicated his opinion on New York's clear policy against slavery in any form and held that the Commerce Clause did not protect the Lemmons' slave property. Justice Wright, who also wrote an opinion, denied that the Constitution granted Congress any power affecting domestic slavery with the exception of the Fugitive Slave Clause. Justice Wright also stated that the Commerce Clause did not apply as New York law could validly prohibit slavery in her territory, for any purpose (Gordon, III, 2006, p.12).

Virginia filed an appeal to the Supreme Court of the United States, and many feared a reversal that would establish slavery in the free states. That appeal, however, was never argued as both New York and Virginia, along with the rest of the country, became engulfed in a bitter and bloody Civil War. The Lemmon and Dred Scott decisions, and the underlying economic and human rights issues implicated by those cases, fueled the fire to the beginning of the Civil War. Virginia, along with the rest of the Confederacy, attempted to have their views of slavery recognized and to uphold slavery where it existed, but New York, and other states that remained in the Union, had different views -- a principle of all men being created equal, a belief that slaves were humans, and that they had rights: the right not to be the property of another man, the right to be citizens of the state in which they resided, and the right not to be discriminated against based on race or color.

The Lemmon Slave Case was a pivotal decision that established human rights long awaited by slaves. New York's quest for human rights did not stop there, as New York continued its advocacy through the twentieth century and still protects human rights today. New York has the proud distinction of being the first state to enact a Human Rights Law. In it, every citizen, whether male or female, black or white, is afforded "an equal opportunity to enjoy a full and productive life." The Legislature created the New York State Division of Human Rights to enforce the Human Rights Law, and to ensure that "every individual . . . is afforded an equal opportunity to participate fully in the economic, cultural and intellectual life of the state" (New York State Division of Human Rights, 2007).

One of the ways the New York State Division of Human Rights enforces the law is through investigation, hearing, and resolution of complaints filed by individuals against alleged discriminators. The courts are critical in the protection of human rights as well.

In 1974, prior to the passage of the Pregnancy Discrimination Act of 1978, the New York State Court of Appeals held in *Union Free School Dist. No. 6 v. New York State Human Rights Appeal Bd.*, that a personnel policy that singled out pregnant women for treatment different from that accorded to other disabilities was prohibited under the Human Rights Law (Aiardo, 1988, p. 6). In 1984, the Court of Appeals, in the landmark case *People v. Liberta,* declared the exemption for rape and sodomy for married couples, as well as the gender based exemption for females in such cases, to be unconstitutional (McCoy, 1988, p.5). Later in 2004, the Court of Appeals struck down New York's death penalty in *People v. Stephen LaValle,* holding the instructions that were statutorily-required to be given to the jury in capital cases were unconstitutional (New York State Court of Appeals, 2004). Most recently, in *State of N.Y. ex. rel. Harkavy v. Consilvio,* the Court of Appeals reversed a decision and ruled that "the state improperly used involuntary civil commitment procedures in Mental Hygiene Law article nine to transfer offenders directly from prison to mental health facilities" (New York State Court of Appeals Recent Decisions, 2007).

The Lemmon Slave case is a landmark case not only for human rights, but also for the nation as a whole. Imagine where America would be today if New York had not taken a stand to protect human rights, or if the case had reached the Supreme Court of the United States and was overturned, thus allowing slavery. Would we have seen a slavery- dependent country, or would New York have denounced that decision as well and advocated, as it always has, for human rights? The attack on Fort Sumter prevents Americans from knowing the answer. Luckily, New York was not afraid when it made a stand for human rights in 1860. It continues to be fearless today, and boasts being the leading advocate for human rights.

References:

Aiardo, S. (1988). Developments in the Law Affecting Women: Current Issues Facing Women in the Workplace and the Role of State Courts. *The Historical Society of the Courts of the State of New York,* p. 6.

Du Bois, W.E.B. (1896/1970). *The Suppression of the African Slave-Trade to the United States of America,* Retrieved on March 31, 2008, from http://www.nyscss.org/resources/publications/NYandSlavery/Chapter%20D/Documents/17861801.NYS.pdf

Gordan, J.D. (2006). The Lemmon Slave Case. *The Historical Society of theCourts of the State of New York 4(4), 1-12.*

McCoy, M. S. (1988). Developments in the Law Affecting Women: Overview. *The Historical Society of the Courts of the State of New York,* p.5.

New York State Court of Appeals, (2007). State of N.Y. ex. rel. Harkavy v Consilvio Retrieved on March 31, 2008, from www.nycourts.gov/ctapps/

New York State Division of Human Rights (2007). *Mission Statement,* retrieved on March 31, 2008, from www.dhr.state.ny.us/