

THE  
CONSTITUTIONAL HISTORY  
OF  
NEW YORK

FROM THE BEGINNING OF THE COLONIAL PERIOD TO THE  
YEAR 1905, SHOWING THE ORIGIN, DEVELOPMENT, AND  
JUDICIAL CONSTRUCTION OF THE CONSTITUTION

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History of Slavery

The Dutch settlers of New Netherland were not originally slave holders. This appears from a communication from the Assembly of XIX. to the States General in October, 1629, eight years after the incorporation of the Dutch West India Company, in which it was said that the Dutch could not successfully compete with the Spanish and Portuguese in colonizing the tropical parts of America, for the reason that the Dutch had no slaves and were not "used to the employment of them." But the West India Company evidently intended to overcome this difficulty, for in the "Freedoms and Exemptions" proposed the same year for the purpose of encouraging the settlement of New Netherland the Company agreed to supply "the colonists with as many blacks as they conveniently can" and so long as the Company might deem proper. This policy was renewed in the "Freedoms and Exemptions" of 1640. So the "Board of Accounts," in a report to the Assembly of XIX., in 1644, suggested that it would not be unwise to allow the introduction into New Netherland of negroes from Brazil, "which negroes would accomplish more work for their masters, and at a less expense, than farm servants." The policy of importing negroes was also encour-

aged in a communication from the Assembly of XIX. to the Director and council in New Netherland in 1646, and again by resolutions of the States General in 1648.

Thus the Dutch, a nation of freemen who had achieved their political freedom after almost unparalleled sacrifices, adopted, for the sake of commercial success, a social policy evidently repugnant to them. To what extent the early colonists availed themselves of the encouragement to introduce negro slavery does not appear. Some of them do not seem to have taken kindly to this policy, for in the remonstrance from the colony which was sent to the States General in 1649, complaint is made, among other things, that while certain slaves had been manumitted, their children were continued in bondage, "contrary to all public law, that any one born of a free Christian mother should, notwithstanding, be a slave and obliged so to remain." The West India Company, replying to this complaint, said that the "Company's negroes taken from the Spaniards, being all slaves, were, on account of their long services, manumitted on condition that their children serve the Company whenever it pleased," and that only three of such children were then in service, one of whom was in the family of Governor Stuyvesant. This partial emancipation had no appreciable effect on the slave policy, which was firmly fastened on the colony, and was further encouraged from time to time by the home government.

That the new policy had taken root is manifest from a petition presented by the magistrates of Gravesend to the Directors of the Company in Amsterdam, in September, 1651, in which the magistrates requested the Directors to purchase for that settlement "negroes or blacks," for which the magistrates would pay whatever price the Company might charge. Incidentally it may be noted that in the summer of 1664, not long before the Dutch surren-

dered the colony to the English, a ship containing some three hundred negroes came into New York bay, that about two hundred and fifty were sold in this colony, and the remainder were taken to colonies farther south.

The English found slavery an established institution in the colony, but it was not new to English colonial experience. Slavery was continued and encouraged in New York, and the records of that period show large importations of slaves. There was, however, an evidently sincere attempt to mitigate the condition of these unfortunate creatures, for we find, in the royal instructions to Governor Dongan in 1686, a direction to him to find out, with the assistance of the council, "the best means to facilitate and encourage the Conversion of negroes & Indians to the Christian Religion." These instructions were often repeated to subsequent governors. "Man's inhumanity to man" was forcibly illustrated by the refusal of the assembly, in 1699, to pass a bill urged by Governor Bellomont for the purpose of facilitating the conversion of slaves, who reported that the bill "would not go downe with the assembly; they having a notion that the Negroes being converted to Christianity would emancipate them from their slavery, and loose them from their service, for they have no other servants in this country but negroes." The same Governor, in a communication to the Lords of Trade, April 17, 1699, advised the importation of negroes from Guinea, to be used in the manufacture of naval stores, saying that they could be imported at an expense of about ten pounds (\$25) New York money, and could be maintained for nine pence a day. To what extent this suggestion influenced the subsequent slave trade I do not know, but, according to the colonial records, 2,395 negro slaves were imported during twenty-five years, from 1701 to 1726 inclusive. According to the census of 1703 there were 1,301 slaves in the counties of New York, Kings,

Richmond, Orange, and Westchester. The general census of 1723 showed 6,171 negroes and slaves in the colony. The last colonial census, 1771, showed 19,883 blacks, and Governor Tryon, in 1774, estimated that there were then 21,149 blacks.

New York was not considered a very good slave market. Governor (Lord) Cornbury, in a report in 1708, said that ships engaged in the slave trade seldom came to New York, "but rather go to Virginia and Maryland, where they find a much better market for their negroes than they can do here." Several statutes passed during the colonial period imposed duties on the importation of negroes, and sought to regulate the treatment and conduct of slaves, including rigorous fugitive slave laws.

In the chapter on the first Constitution I have quoted the preamble and resolution proposed in the Convention of 1776-77 by Gouverneur Morris, intended to provide for the gradual abolition of slavery. The preamble recited that the blessings of freedom ought to be dispensed to all mankind, but that the immediate abolition of slavery was deemed inexpedient. The legislature was therefore urged to take measures as soon as practicable for the abolition of slavery, "so that in future ages every human being who breathes the air of this state shall enjoy the privileges of a freeman." The preamble and the resolution were each separately adopted by a large majority. The resolution did not embody an essential constitutional principle, and was only a recommendation to the legislature. After further consideration the Convention decided to omit the provision from the Constitution, but the effect of it remained as a declaration of the policy which ought to be adopted and pursued in the state in relation to slavery. I have also, in that chapter, noted the fact that John Jay supported the Morris resolution, hoping that New York would be the pioneer state in the abolition of

slavery. The Constitution as finally adopted was silent on this subject, and it is noteworthy, in view of the action of the Convention of 1821, that the first Convention made no discrimination among voters on account of color. Negroes who possessed the other qualifications were permitted to vote on the same terms as whites; indeed, the classification of races was not even suggested in the first Constitution. The statesmen who framed the first Constitution, and who, by adopting the Morris resolution, declared their attitude toward slavery, continued in control of public affairs many years.

The policy of the Morris resolution was practically adopted by the legislature in 1785, by an act which prohibited the sale in this state of any negro or other person imported or brought into the state from any other part of the United States, or from any other place or country, and such a person so sold contrary to the statute was thereupon declared to be free. The same statute provided for the manumission of slaves, either by certificate or by will. According to an act passed in 1798 it seems that the Quakers had manumitted their slaves, but, in some cases, not in strict conformity with the statute. This act ratified all such manumissions. The abolition movement was evidently growing, for in March of the next year an act was passed declaring that every child born in this state of a slave after the 4th of July, 1799, should be free; yet not quite free, for the statute made such a child the servant of its mother's proprietor until twenty-eight years of age if a male, and twenty-five years if a female, and subject to the provisions of law relating to persons bound to service by overseers of the poor. The act of 1801 restricted the importation or exportation of slaves except under specified conditions, amounting practically to a positive prohibition. The act of 1817 required masters of servants who became such under the act of

1799 and subsequent statutes declaring the status of children of slaves to provide for the education of such servants by teaching them, among other things, to read the Holy Scriptures before they became eighteen years of age, and in default, such a servant, on arriving at that age, was entitled to his freedom. The act of 1817 was another step toward the ultimate abolition of slavery, for it expressly declared that "every negro, mulatto, or mustee within this state, born before the 4th day of July, 1799, shall, from and after the 4th day of July, 1827, be free." The 4th of July, 1827, thus became New York's emancipation day. This principle was confirmed by that part of the revised statutes, including this subject, which was passed December 3, 1827, and signed by Governor De Witt Clinton on the same day, which expressly declared that "every person born within this state, whether white or colored, is free; every person who shall hereafter be born within this state, shall be free; and every person brought into this state as a slave, except as authorized by this title, shall be free." Thus ended slavery in New York, after an existence of two centuries.

Opposition to slavery, which had been so clearly expressed by the Morris resolution in the Convention of 1777, continued to increase, and was evidenced not only by the New York act of 1817 providing for the abolition of slavery, but also by the action of other states, and by most earnest discussion in Congress. New York was not oblivious to national anti-slavery agitation, but by executive and legislative utterances sustained the policy of restricting slavery, which found expression in the Missouri Compromise of 1820. The anti-slavery line between the North and South was already being closely drawn, and the proposed admission of Missouri into the Union as a slave state culminated in the declaration of a far-reaching policy in relation to the extension of slavery.

Governor De Witt Clinton referred to the subject in his annual speech to the legislature in January, 1820, in which, after considering some general aspects of national affairs, he said he considered "the interdiction of the extension of slavery a paramount consideration. Morally and politically speaking, slavery is an evil of the first magnitude; and whatever may be the consequences, it is our duty to prohibit its progress in all cases where such prohibition is allowed by the Constitution. No evil can result from its inhibition more pernicious than its toleration; and I earnestly recommend the expression of your sense on this occasion as equally due to the character of the state and the prosperity of the empire." The assembly appointed a select committee to consider this part of the Governor's speech. The committee reported the following preamble and resolution, which were adopted by both houses:

"Whereas, the inhibiting the further extension of slavery in these United States is a subject of deep concern among the people of this state; and whereas we consider slavery an evil much to be deplored, and that every constitutional barrier should be interposed to prevent its further extension; and that the Constitution of the United States clearly gives Congress the right to require, in all new states not comprised within the boundaries of these United States, the prohibition of slavery as a condition of its admission into the Union:" New York senators and representatives were therefore asked to "oppose the admission as a state into the Union any territory not comprised as aforesaid, without making the prohibition of slavery therein an indispensable condition of admission."

This was in January, 1820. On the 6th of March following, Congress passed an act providing for the admission of Missouri as a state, and which act expressly pro-

hibited slavery in that part of the Louisiana purchase north of thirty-six degrees and thirty minutes north latitude not included in Missouri. The first Constitution of Missouri contained a clause requiring the legislature to pass laws preventing free negroes and mulattoes from becoming residents of the state. Congress objected to this provision and declined to admit the state, except upon the condition that no law should ever be passed by the legislature to enforce the free negro clause in the state Constitution. The legislature was required to assent to this condition by a public act, to be communicated to the President, who was thereupon authorized to issue a proclamation declaring Missouri admitted to the Union. An act was accordingly passed which was deemed sufficient by President Monroe, and a proclamation was issued by him on the 10th of August, 1821. This was only eighteen days before the meeting of the New York Constitutional Convention. Four important steps had been taken in relation to slavery: three in New York,—namely, the act of 1785, prohibiting the sale of persons as slaves in New York, the act of 1799, giving freedom to the children of slaves, and the act of 1817, providing for the ultimate abolition of slavery in this state in 1827,—and one by Congress, prohibiting slavery in the northern part of the Louisiana purchase. These were some of the positive public acts which were fresh in the minds of statesmen who composed the Convention, but the discussion went far beyond the results actually accomplished, and the anti-slavery sentiment was rapidly growing. New York had taken the last practicable step for the abolition of slavery, but slavery still existed, and only a few months after the legislature passed the concurrent resolution already quoted, a Federal census was taken which showed that in New York there were then, 1820, 10,089 slaves, besides 29,278 free blacks, and 701 indented servants, which

probably included the free children of slave parents, under the act of 1799. It thus appeared that New York had a colored population amounting to 39,367, not including indentured servants, some of whom were probably children of slaves.