

# Martial Manhood Citizenship, Suffrage, and the un-Reconstructed North in Pennsylvania 1862-1870

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The Confiscation Acts of 1861 and 1862 exhibited some of the first federal actions of Congress at the beginning of the Civil War. The two successive acts undermined the Confederate war machine that relied on slave labor through appropriation of Confederate resources. Congress passed the first of the Confiscation Acts in August of 1861. It stipulated that the Union Army had the right to confiscate any, and all property held by rebels used specifically to wage war.<sup>1</sup> Part of the contraband property confiscated in relation to the legislation included slaves.<sup>2</sup> On July 17<sup>th</sup> 1862, Congress passed the second Confiscation Act. It included a militia law that in effect instituted a draft for military service. It also included a provision that gave President Lincoln the ability to incorporate free blacks and slaves into the service of the Union war effort.<sup>3</sup> The Acts of July 17<sup>th</sup>, 1862 authorized free blacks and freedmen to contribute directly to the Union war enterprise as laborers or soldiers and promised freedom from bondage to slaves who rendered service to the Union. Passage of this statute invoked intense debate in Congress over the future implications of black military participation for the nation. Republicans supported the

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<sup>1</sup> James McPherson, *Battle Cry of Freedom: The Civil War Era* (New York: Oxford University Press, 1988), 353

<sup>2</sup> Historian Steven Hahn has called the mass exodus of slaves to Union lines during the Civil War as the greatest slave rebellion in American history that is often overlooked by historians. Slaves seized on the opportunity created by the war to turn the rebellion of the slaveholding South against the Union into their own rebellion against slaveholders and the institution of slavery. Hahn also posited that contraband camps provided slaves a space to expand their social networks with each other. Steven Hahn, *A Nation Under Our Feet: Black Political Struggles in the Rural South from Slavery to the Great Migration* (Cambridge: Harvard University Press, 2003), 64-65

<sup>3</sup> Christian Samito, *Becoming American under Fire: Irish Americans, African Americans, and the Politics of Citizenship during the Civil War Era* (Ithaca: Cornell University Press, 2009), 39-40;

Confiscation Acts and specifically its provisional use of free blacks and former slaves in the war effort. Some border state congressmen and conservative Republicans feared slave insurrection and mass emancipation. Moreover, such politicians expressed outrage at the potential shame endured by white soldiers who would be subjected to service alongside black military participants.<sup>4</sup> But the necessities of the Civil War provoked congressmen to see the value of black soldiers and laborers who could cripple the Confederate war effort and bolster the Union Army. In large part, Congress conceptualized and passed the Confiscation Acts as a response to the military edicts issued by Union army generals who autonomously issued emancipation declarations in their military advancement and occupations of Confederate states.<sup>5</sup>

This paper investigates military service in the Civil War and the changes that it fostered in national citizenship, ideologies about rights, and conflicts of inclusion within the body politic in the context of military service. In the aftermath of the Civil War, a period of momentary debate arose in the North between black veterans and activists whose theories of citizenship contrasted those articulated by the federal government. Black martial manhood citizenship, federal constitutional citizenship, and local Pennsylvania citizenship clashed over the prospects of suffrage for black men.<sup>6</sup>

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<sup>4</sup> James McPherson, *Battle Cry of Freedom: The Civil War Era* (New York: Oxford University Press, 1988), 500; Christian Samito, *Becoming American under Fire: Irish Americans, African Americans, and the Politics of Citizenship during the Civil War Era* (Ithaca: Cornell University Press, 2009), 28-29;

<sup>5</sup> Hahn and McPherson both caution us not read the Confiscation Acts as an early move toward emancipation. Contraband appropriation policies were not uniformly applied to Union army occupations of Confederate territory. These policies in the early stages were purely strategic military moves and often times sought to avoid confiscation of slaves so as to win over slaveholders to the Union cause in the Upper South. James McPherson, *Battle Cry of Freedom: The Civil War Era* (New York: Oxford University Press, 1988), 499; Steven Hahn, *A Nation Under Our Feet: Black Political Struggles in the Rural South from Slavery to the Great Migration* (Cambridge: Harvard University Press, 2003), 70-73

<sup>6</sup> In this paper I use citizenship to define a person deemed a part of the body politic as a citizen but also endowed with suffrage rights and implicitly male. James Kettner argues that the American Revolution “created the status of American Citizen” under republican citizenship that was based on equality of rights amongst free citizens. However I find this definition to be inept at contextualizing the experiences of free blacks in Pennsylvania before the Civil

Black activists argued that citizenship included suffrage rights, and moreover that their military service earned them all the rights of citizenship. I argue that in the years before the Fifteenth Amendment, while judicial theorists and black activists offered competing theories of citizenship, the actual practice of the franchise in Pennsylvania linked whiteness rather than loyalty to the Union or military service to full political rights.<sup>7</sup> The franchise could neither be gained (nor lost) by military service but only by race. Through their service, black men thus earned *civil* rights but not *political* rights. Northern Republicans, in common with Northern Democrats and former rebels in the South, feared that black men lacked the capacity properly to exercise that privilege.<sup>8</sup> The response in Pennsylvania between 1862 and the ratification of the

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War as well as in the early Reconstruction era for which this paper covers. Instead I offer as a definition of citizenship the same definition advanced by black activists after their disfranchisement in 1838. *Appeal of Forty Thousand Citizens Threatened with Disfranchisement, to the People of Pennsylvania* (Philadelphia: Merrihew and Gunn, 1838); James H. Kettner, *The Development of American citizenship, 1608-1870* (Chapel Hill: University of North Carolina Press, 1975), 10

Rogers Smith takes seriously the historical inegalitarian nature of American citizenship that does not fit neatly within either liberal or republican strands. For this he advances an ascriptive tradition of American citizenship that speaks to this inegalitarian history but allows for the complexity of American civic tradition. Rogers M. Smith, *Civic ideals: Conflicting visions of Citizenship in U.S. history* (New Haven; Yale University Press, 1997);3-9

For other relevant descriptions of citizenship that deal nuances of experience see: Douglas Bradburn, *The Citizenship Revolution: Politics and the Creation of the American Union, 1774-1804* (Charlottesville, VA : University of Virginia Press, 2009); Judith Shklar, *American Citizenship: The Quest for Inclusion* (Cambridge: Harvard University Press, 1991)

I deliberately use the phrase manhood citizenship in the following pages to signify that for all parties considered suffrage rights as a tenet of citizenship was an exclusively male debate. I do not intend to imply that suffrage rights or citizenship were rightfully exclusive male domains but rather that my deliberate usage of manhood is to eschew a false universal descriptor and to be incessantly indicative of the gendered exclusions where servicemen and activists wagered their maleness in consideration of their citizenship and rights.

<sup>7</sup> Throughout the paper I refer to African Americans as black(s) as a descriptor. While recognizing the commonly accepted term for individuals of African descent in the U.S. is African American, I use black purposely to represent the ways in which black activists of the nineteenth century asserted suffrage as a fundamental right of citizenship. I seek to problematize envisioning them as citizens if they do not have the political rights. I use black to connote that they are not full citizens and not fully American in absence of the franchise. Further Patrick Rael has previously recounted the contested and political history of naming for nineteenth century black activists. Rael argued that naming, going from African to Colored American, was purposeful for black activists seeking political and social inclusion based on racially representative respectability. He also advanced that black activists sought a name that would eschew African to combat racism, foster cohesiveness within the Colored American community, and firmly stake their claim to Americanness. Patrick Rael, *Black Identity & Black Protest in the Antebellum North* (Chapel Hill: University of North Carolina Press, 2002) 82-117

<sup>8</sup> Heather Richardson, *The Death of Reconstruction: Race, Labor, and Politics in the post-Civil War North, 1865-1901* (Cambridge: Harvard University Press, 2001), 41-44

Fifteenth Amendment in 1870, to calls for black citizenship based on their military service, paralleled similar restrictions on the political participation of black men in other Northern states.

Attorney General Edward Bates's opinion on the prospects of black citizenship articulated a new theory of citizenship that served as the Union's, and subsequently Republican's, political vision of the nation and its citizenry after the Civil War. Bates affirmed black citizenship but segregated citizenship from suffrage rights. Black activists staked their claim on suffrage based on the service of black soldiers that warranted a citizenship inclusive of the franchise. The Pennsylvania Supreme Court ruled on two cases in which draft deserters sued to maintain their right of franchise. I connect multiple articulations of citizenship to excavate the various opinions of citizenship and suffrage rights in Pennsylvania in the early years of Reconstruction where military service held little sway in regards to negative or positive rights of suffrage.

Most Reconstruction scholarship has focused generally on the South as the nation sought to reorganize the Confederate states for readmittance into the Union.<sup>9</sup> Reconstruction historiography depicted the South as the site of greatest tension and turmoil in the process of reconstruction that led to widespread white racialized terror and violence as former slaves sought entrance into the political process and agitated for economic independence.<sup>10</sup> The complications of readmittance of former rebellious states back into the union under the new realities of slave

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<sup>9</sup> Foner noted that Reconstruction in the North has been less reviewed in the historiography precisely because the South is the key place site of Reconstruction. Foner also lamented that the entirety of Reconstruction cannot be understood in total without a greater account of events in the North. Eric Foner, *Reconstruction: America's Unfinished Revolution, 1863-1877* (New York: Harper & Row, 1988), xxiv;

<sup>10</sup> On the general historiography of Reconstruction see: Eric Foner, *Reconstruction: America's Unfinished Revolution, 1863-1877* (New York: Harper & Row, 1988); W.E.B. Du Bois, *Black Reconstruction in America* (New York: The Free Press, 1998); Heather Richardson, *The Death of Reconstruction: Race, Labor, and Politics in the post-Civil War North, 1865-1901* (Cambridge: Harvard University Press, 2001); Steven Hahn, *A Nation Under our Feet : Black political struggles in the rural South, from slavery to the Great Migration*. (Cambridge, MA: Belknap Press of Harvard University Press, 2003); David Blight, *Race and Reunion: The Civil War in American Memory* (Cambridge: Harvard University Press, 2001); Carole Emberton, *Beyond Redemption: Race Violence and the American South After the Civil War* (Chicago; University of Chicago Press, 2013).

abolition and equal rights represented the greatest conflict of reconstruction. However, the North also dealt with these new social transformations.<sup>11</sup> The Union victory enabled them to reconstruct not just the South, but also create a new vision of republicanism for the nation.<sup>12</sup>

The first section this paper opens with the opinion of Attorney General Bates on black national citizenship within the context of the Civil War. The next section recounts black activists' pursuits of citizenship that included male suffrage rights based on the military efforts of black soldiers. Then the paper examines the practice of martial citizenship on the ground in Pennsylvania as the state Supreme Court determined the suffrage rights of Union army deserters.

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<sup>11</sup> Foner stated the social transformations of class and the status of African Americans occurred in both a southern and northern context. Richardson's book makes an attempt at understanding the breakdown of Reconstruction by investigating Northern perceptions of the South and black workers that led to their abandonment and discontent with Reconstruction. Still few scholars make the attempt to detail Reconstruction in the North, most likely because Union victory meant that the South was in need of being remade in the image of the North that has superseded the necessity of understanding historically how the North dealt with these social changes.

Several authors have contributed scholarship that foregrounds the North in the era of Civil War and Reconstruction. For a historiography on the North and citizenship in this era see: Thomas J. Brown, edit., *Reconstructions: New Perspectives on the Postbellum United States* (New York: Oxford University Press, 2006); David Quigley, *Second Founding: New York City, Reconstruction, and the Making of American Democracy* (New York: Hill and Wang, 2004); Janette Greenwood, *First Fruits of Freedom: The Migration of Former Slaves and their search for Equality in Worcester, Massachusetts, 1862-1900* (Chapel Hill: University of North Carolina Press, 2009); Xi Wang, *The Trial of Democracy: Black suffrage and northern Republicans, 1860-1910* (Athens: University of Georgia Press, 1997); Stephen Kantrowitz, *More Than Freedom: Fighting for Black Citizenship in a White Republic, 1829-1889*. (New York: Penguin Press, 2012);

Kate Masur presents valuable contribution in her work on Washington, D.C. It stands alone in that the special governance of D. C. made it unlike any state. However it still provided an excellent purview into congress and local African Americans wrestled with questions of emancipation, citizenship, and political rights. Kate Masur, *An Example for All the Land: Emancipation and the Struggle over Equality in Washington, D.C.* (Chapel Hill: University of North Carolina Press, 2010)

<sup>12</sup> Richardson noted that war itself was most salient in American history in terms of expanding suffrage within the nation. She also noted that class tension caused contractions and the denial of suffrage expansion along with race and gender. Heather C. Richardson, *West From Appomattox: The Reconstruction of America after the Civil War*. (New Haven: Yale University Press, 2007)

While recognizing Rodgers has skillfully traced the history of republicanism in American historiography and detailed its somewhat liberal use in attempts to describe a various assortment of revolutionary and political ideologies and Appleby's claim that contested liberalism is a more appropriate descriptive term for American history, I still appropriate Bradburn's take in that republican(ism) attempts to achieve equal sovereignty. Douglas Bradburn, *The Citizenship Revolution: Politics and the Creation of the American Union, 1774-1804* (Charlottesville, VA : University of Virginia Press, 2009), 10; Daniel T. Rodgers, "Republicanism: The Career of a Concept," *Journal of American History* 79, no. 1 (1992): 11–38; "Republicanism in Old and New Contexts", *William and Mary Quarterly*, Vol. 43, No. 1 (January 1986); J. G. A. Pocock, *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition* (Princeton: Princeton University Press, 1975)

### *Attorney General Edward Bates and Union vision of Citizenship*

Edward Bates, a lawyer and politician from Missouri, was President Lincoln's first Attorney General who served in the Presidential Cabinet from 1861-1864. As Lincoln's Attorney General, Bates was critical in the formal execution of the President's wartime policies.<sup>13</sup> Attorney General Bates's assessment on citizenship served as a political doctrine that the Union set for remaking the nation after the war. In both presidential and congressional reconstruction the new vision of the United States was one of universal citizenship but one in which suffrage rights were racially exclusive privileges bestowed by the states. The federal government held no power to endow the franchise upon citizens.

Attorney General Bates argued that citizenship and the right of suffrage were not affixed to each other. According to Bates's interpretation of the Constitution, one could be a citizen and not be entitled to voting rights. Bates stated that, "Again, with regard to the right of suffrage, that is, the right to choose officers of the government, there is a very common error to the effect that the right to vote for public officers is one of the constituent elements of American citizenship."<sup>14</sup> Bates claimed that the Constitution offered no evidence or precise definition of whom or what a citizen is, rather the Constitution only used the word to describe the relationship between the nation and the individual as a member of the body politic. The individual owed the nation loyalty and allegiance and the nation owed the individual protection.<sup>15</sup> Thus, while he disjoined suffrage as a right of citizens he also made clear that only those deemed citizens had ever enjoyed the

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<sup>13</sup> James M. McPherson, *Battle Cry of Freedom: The Civil War Era* (New York : Oxford University Press, 1988).

<sup>14</sup> Edward Bates, *Opinion of Attorney General Bates on Citizenship* (Washington: Government Printing Office, 1862), 4

<sup>15</sup> Edward Bates, *Opinion of Attorney General Bates on Citizenship* (Washington: Government Printing Office, 1862), 7

right of suffrage. For Bates, all individuals born within the nation were citizens. He even addressed slavery, race, and color as conditions commonly used to deny citizenship to individuals. Bates determined that the Constitution made no mention of exclusions based on race or color and affirmed that residents born within the nation of African descent abided in fact as citizens of America. Bates acknowledged that blacks were citizens but maintained that its only meaning was that this individual was a member of the body politic. It had no bearing on any immunities or privileges of citizenship and any rights of citizens. In Bates's assessment, local states determined the rights and privileges afforded to citizens as long as they did not interfere with any rights delegated by the Constitution. In this respect Bates's 1862 *Opinion* on citizenship was hollow on the right of suffrage and left it to be determined by the several states.

Bates penned his opinion on black citizenship in November of 1862 in a response to a letter he received from Secretary of Treasury Salmon Chase. In his documented opinion Bates offered a new interpretation of black citizenship in a national context that refuted the general consensus on black citizenship at the time and also refuted the opinion of Supreme Court Justice Roger Taney offered in the 1857 Dred Scott decision. Earlier that summer Congress had passed the Militia Act, which authorized President Lincoln to use free blacks in the Union war effort as either laborers or soldiers. In September Lincoln issued the preliminary Emancipation Proclamation.<sup>16</sup> Congress and Lincoln set the stage for a war of union to incorporate a war against slavery and change the political status of blacks within the nation.

The Confiscation Acts presented the Unionist states with a problem the nation had never faced on such a wide scale before. Black military service in the effort to quell the rebellion

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<sup>16</sup> James M. McPherson, *Battle Cry of Freedom: The Civil War Era* (New York : Oxford University Press, 1988).

provoked a reassessment the relationship of blacks with the nation. American military service had created citizens out of soldiers as a reward for their service to the nation.

Overall, Republicans were focused on Reconstruction in the South and protecting and ensuring the prosperity of Freedmen. However, for Republicans, this did not necessitate black suffrage in either the North or the South. After the Civil War, Northern Republicans focused on rebuilding the nation under their free labor ideology. They viewed Freedmen in the South as ideal for their national free labor vision and sought to incorporate them into this new national vision. Republicans focused on Freedmen in the south but not on blacks in the north and worked to ensure whites in south did not impede progress of Freedmen in economic life.<sup>17</sup> While black activists sought political rights and civil equality Republicans viewed freedom from bondage as satisfactory for blacks to live and prosper in post Civil War America.<sup>18</sup>

President Andrew Johnson's policy on Reconstruction in the wake of Lincoln's assassination was a quick route for readmission of the former rebel states. Johnson was most concerned readmission of southern states to the Union. In terms of black suffrage in the South, Johnson saw it as a threat to the future prosperity of yeoman farmers and was against the political rights of Freedmen.<sup>19</sup> Republicans became increasingly upset with the path and policies of Presidential Reconstruction. They disagreed with the President on the terms of Confederate state readmission and the restructuring society in the South. After the refusal of several southern states to ratify the Fourteenth Amendment, Republicans sought to take control of Reconstruction. They passed the Reconstruction Acts in 1867, and overrode the vetoes of President Johnson. The

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<sup>17</sup> Heather C. Richardson, *The Death of Reconstruction: Race, Labor, and Politics in the post-Civil War North, 1865-1901* (Cambridge: Harvard University Press, 2001)

<sup>18</sup> Eric Foner, *Reconstruction: America's Unfinished Revolution, 1863-1877* (New York: Harper & Row, 1988), 75

<sup>19</sup> Eric Foner, *Reconstruction: America's Unfinished Revolution, 1863-1877* (New York: Harper & Row, 1988), 180-183).



Reconstruction Acts reorganized the former rebel states into federally governed military districts and enfranchised blacks in the South.<sup>20</sup>

Congressional Reconstruction commenced in opposition to Presidential Reconstruction under Johnson. Republicans were dismayed at the widespread violence taking place in the south and extremely worried about their ability to defeat Democratic opponents in elections given that many of the former Confederates had been readmitted and taken political office in the South. Congress passed the Reconstruction Acts in 1867 that gave freedmen the right of suffrage in the South. However, blacks in the North were still unable to vote and hold elected office. Republicans had political reasons for the advancement of black suffrage in the South but hesitated on whether black suffrage in the North was viable given the general public opposition to it. Republicans passed the Thirteenth and Fourteenth Amendments as well as the Civil Rights Act of 1866 but none of this legislation guaranteed the right of suffrage for black men in the North.

Reconstruction era federal legislation such as the Thirteenth and Fourteenth Amendments, and the 1866 Federal Civil Rights Act, are read historically as a ‘constitutional revolution.’<sup>21</sup> In this moment Congress recognized the natural and civil rights of all citizens regardless of color. Congress deemed that the Constitution imbued all Americans with citizenship and that Congress was bound to protect these rights. However, even as Congress embarked of this revolution in Constitutional rights, many still were ambivalent, at best, on black male suffrage rights. In fact, as Robert Kaczorowski contended in his analysis of Republican

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<sup>20</sup> Eric Foner, *Reconstruction: America's Unfinished Revolution, 1863-1877* (New York: Harper & Row, 1988), 271-291

<sup>21</sup> Robert J. Kaczorowski, “To Begin the Nation Anew: Congress, Citizenship, and Civil Rights after the Civil War,” *The American Historical Review* 92, No. 1 (Feb., 1987), 49

ideology surrounding this federal legislation, “The position that contemporaries regarded as radical in 1866 was securing the voting rights of blacks. As a matter of law and as a matter of political objectives, most contemporaries distinguished between civil rights and voting rights.”<sup>22</sup> In Kaczorowski’s assessment, moderate Republicans would agree with Bates’s 1862 *Opinion* that citizenship and voting rights were two different rights of citizens and not connected as one being a specific right or derivative of the other.

Kaczorowski still argued that this change from local state power over citizenship and delegation of rights of individuals within states, to citizenship being federally governed as fundamentally revolutionary. Indeed, it was so in the sense that now blacks had legal guarantees of protection to their civil rights. However, we should not easily overlook the significance of Bates’s disjunction of citizenship from political rights and Republicans agreement with this principle. Black activists had continually argued for an equal citizenship that consisted of both civil rights and male suffrage rights. The absence of suffrage rights at the federal level meant that those rights were reserved for delegation within the states. In Pennsylvania the State Constitution held that only free white men were legally eligible to vote. So despite the revolutionary Constitutionalism of early Reconstruction, and federal legislation that guaranteed civil rights for all blacks and gave suffrage rights to black men in the South, Pennsylvania maintained an all white and all male body politic prior to ratification of the Fifteenth amendment in 1870.

### *Black Martial Manhood Citizenship in Pennsylvania*

Black Pennsylvanians had historically viewed suffrage as one of their fundamental rights as citizens of the state. In 1838, the Pennsylvania Constitutional Committee voted to amend the endowment of suffrage rights on black citizens in the State Constitution. The 1790 State

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<sup>22</sup> Ibid, 49

Constitution had deemed those enfranchised as freemen, over the age of twenty one, who had paid taxes, and established residence within the state. Free black men, as the 1790 State Constitution understood it and in limited practice, were in fact citizens and also held the right of suffrage in Pennsylvania. However, the 1838 revisions to the State Constitution inserted the word white into the phrasing on suffrage effectively removing black male suffrage rights out of the Constitution. Black Pennsylvanians wrote a response to the Constitutional Committee and their fellow Pennsylvanian citizens in response to this state usurpation of suffrage rights in the free state of Pennsylvania.<sup>23</sup> Blacks were written out of suffrage in 1838 but saw service in civil war as opportunity to end slavery and affect their rights of citizenship that included suffrage. They did this thru martial manhood concept of citizenship.

Free Black men had been petitioning for their right to participate in the Civil War as soldiers since its outbreak. Some black locales in the North even formed their own small drilling units in preparation for their enlistment in military service. Once the call went out black men responded in vast numbers. In total nearly 200,000 free blacks and former slaves served in the Union army during the war.<sup>24</sup> Keenly, black soldiers and activists had always viewed the war as a great political opportunity; it was an opportunity to deal a death blow to slavery, which held most blacks in bondage and threatened the safety of free blacks everywhere. It was also an opportunity to substantiate their claims of citizenship and equality. Black activists like Octavius

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<sup>23</sup> Black Pennsylvanians denounced the designation of whiteness as a standard for suffrage rights. Authored by a meeting of prominent black men that included James Forten, Robert Purvis, and James Cornish, the pamphlet titled *Appeal of Forty Thousand Citizens threatened with Disfranchisement, to the People of Pennsylvania* was a political and legal retort that denounced the 1838 state constitutional revision on suffrage. The Appeal affirmed themselves as citizens of Pennsylvania and that suffrage was a basic right of their citizenship. *Appeal of Forty Thousand Citizens Threatened with Disfranchisement, to the People of Pennsylvania* (Philadelphia: Merrihew and Gunn, 1838)

<sup>24</sup> Michael Vorenburg, *The Emancipation Proclamation: A Brief History with Documents* (New York: Bedford/St Martins, 2010), 18

Catto and others in the Pennsylvania State Equal Rights League relied on their service to the nation in its time of need to stake legitimate claim on full American citizenship.

Black soldiers, whether former slaves or free Blacks joined the Union Army to destroy the institution of slavery and stake claims on their rights as American citizens. Free blacks in the North were aware that the existence of slavery in the South limited their freedom and their citizenship.<sup>25</sup> Years of battle over Fugitive Slave laws and the threat of being kidnapped and sold into slavery taught them that even though slavery was abolished in the North the nation was still wedded to racialized slavery which threatened their safety and limited their economic prosperity everywhere.<sup>26</sup> Free blacks in Pennsylvania had organized militias in advance of Lincoln's call for black regiments in preparation for their service as soldiers fighting for their liberty and citizenship rights.

Black soldiers and black political activists had always envisioned the Civil War as a war against slavery in the south, the threat enslavement in the North, and the social and political stigma of slavery everywhere that questioned the potential of all blacks free and enslaved. They anticipated that service in the Union war effort would lead to greater social inclusion. In fact, "participation in the Union victory now invigorated blacks to assert stronger calls for defined citizenship rights based on equality."<sup>27</sup> Military service emboldened black claims of citizenship and rights and energized a new iteration of the black convention movement culminating in the founding of the National Equal Rights League in 1864 and its concurrent state auxiliaries like the Pennsylvania State Equal Rights League. In newspapers, petitions to elected officials and in

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<sup>25</sup> Stephen Kantrowitz, *More Than Freedom: Fighting for Black Citizenship in a White Republic, 1829-1889*. (New York: Penguin Press, 2012)

<sup>26</sup> Stephen Kantrowitz, *More Than Freedom: Fighting for Black Citizenship in a White Republic, 1829-1889*. (New York: Penguin Press, 2012)

<sup>27</sup> 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), 136

convention resolutions blacks centralized loyalty and military service with their claims of equal rights. Historian Christian Samito argued that,

Blacks used their military service as the cornerstone of their demands for political and civil rights, and to thrust these claims into the center of Reconstruction debate, but they also shrewdly connected their loyalty to deliberations over suffrage, the after of the Union, and the success of the Republican agenda at a time when even most Republicans remained unenthusiastic at best about giving the vote to the black man nationwide.<sup>28</sup>

Black political activists and soldiers staked their claims on citizenship based on military service in the Union war effort. Black men affirmed themselves as citizen-soldiers and called for a martial citizenship that recognized their civil and political rights based on the military service.

Historian Eric Foner, noted the significance of this era. He submitted that “In seeking to invest emancipation with a broad definition of equal rights, blacks challenged the nation to live up to the full implications of its democratic creed and helped set in motion events that fundamentally altered the definition of citizenship for all Americans.”<sup>29</sup> Blacks of all social classes, from both the North and the South, sought to imbue their freedom with equal civil and political rights that spoke to their sense of belonging and right of citizenship. Frederick Douglass had claimed throughout the duration of the war that the eventual consequence of emancipation had to be equality before the law for blacks and suffrage rights for black men. In the Reconstruction Era, suffrage rights were symbolic of citizenship and a marker of inclusion in the public arena of American social life.<sup>30</sup> Foner posited that blacks were fundamental in changing the discourse of citizenship within the nation from a local issue left to individual states to a national mandate that was federally governed. Foner claimed that,

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<sup>28</sup> Ibid, 164

<sup>29</sup> Eric Foner, “Rights and the Constitution in Black Life during the Civil War and Reconstruction” *The Journal of American History* 74, No. 3, The Constitution and American Life: A Special Issue (Dec., 1987), 863

<sup>30</sup> Eric Foner, “Rights and the Constitution in Black Life during the Civil War and Reconstruction” *The Journal of American History* 74, No. 3, The Constitution and American Life: A Special Issue (Dec., 1987), 872

Blacks particularly identified the post war amendments as definitions of a new national citizenship and as guarantees of federal authority to protect the rights of individual citizens. The political crisis of 1866 -which black complaints against the injustices of Presidential Reconstruction had helped create -had produced the Fourteenth Amendment, defining for the first time a national citizenship with rights no state could abridge, embracing blacks and whites equally.<sup>31</sup>

In 1866, amidst the reemergence of the Black Convention Movement and the organizing of the National Equal Rights League formed in 1864, a group of black male political activists met in Washington, D. C. to discuss their goals and strategic planning. This meeting then sent a smaller group of representatives, which included George Downing, Frederick Douglass, William Whipper, and others, to meet President Andrew Johnson to discuss each other's respective agenda and to attempt to find common ground. The delegation lobbied the President to support black male suffrage to which President Johnson rebuffed and made known that was not a part of his Reconstruction plans. After reaching an impasse on black male suffrage with the President, the representatives penned an op-ed letter in response to the meeting with the President that was published in several contemporary newspapers. The delegation asserted that, "The first point to which we feel especially bound to take exception is your attempt to found a policy opposed to our enfranchisement, upon the alleged ground of an existing hostility on the part of the former slaves toward the poor white people of the South. We admit the existence of this hostility, and hold that it is entirely reciprocal."<sup>32</sup> Douglass, Downing, and other black activists saw suffrage rights as critical to not only their economic prosperity but also critical to protecting the nation from internal racial hostilities that could undermine civil governance. In their view, the denial of black male suffrage was indicative of the hollowness of words for which President had expressed his support of blacks. They asked rhetorically, "How can you, in view of your professed desire to

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<sup>31</sup> Ibid, 880

<sup>32</sup> *Christian Recorder*, 17 September 1866

promote the welfare of the black man, deprive him of all means of defence, and clothe him whom you regard as his enemy in the panoply of political power?”<sup>33</sup> The delegation understood that suffrage rights were the only way to secure the stated goals of President Johnson in the aftermath of the Civil War. However, President Johnson maintained hostility towards black male suffrage because he was sure that they would use the franchise prejudicially against poor whites in the South, despite the opinions of the delegation and the petitions of blacks from the North.<sup>34</sup>

Congress proved amicable to black martial claims of equal civil rights evidenced by Constitutional amendments and the 1866 Civil Rights Act. As Kaczorowski and like minded historians have argued, on a national level, congressional legislation established a new iteration of citizenship, particularly by delegating that protection of black civil rights was a federal responsibility. However, despite their claims of loyalty and invocations of military service suffrage rights, delegated by individual states, remained out of their grasp. “Many Northerners, however including Republicans, initially showed apathy or opposition to allowing blacks to vote in their own states.”<sup>35</sup> In some sense Republicans, federally and locally, who did not support black political rights responded to the shared antipathy of their constituents and neighbors that sought to deny black political rights.

### *Draft desertion and suffrage rights in Pennsylvania*

Recently, historians have recovered the desertion trials of Pennsylvania. In *With Malice Toward Some*, author William Blair situated the court cases within the narrative of the Union’s

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<sup>33</sup> *Christian Recorder*, 17 September 1866

<sup>34</sup> The Pennsylvania State Equal Rights League had a protracted discussion on the goal of suffrage for women with Octavius Catto, Robert Purvis, and Rev. Elisha Weaver being in favor of equal voting rights. However, the majority of the PSERL opposed woman’s suffrage in fear that it would hurt the potential for African American male suffrage rights. Hugh Davis, “The Pennsylvania State Equal Rights League and the Northern Black Struggle for Legal Equality, 1864-1877,” *The Pennsylvania Magazine of History and Biography* 126, No. 4 (Oct., 2002), 620

<sup>35</sup> *Ibid*, 165

internal struggle with governing treason while maintaining the Union war effort and quelling dissension. Blair posited that these two cases can be seen as an outgrowth over disputes between Republicans and Democrats for votes and political control within the state and retribution for acts of disloyalty during the war.<sup>36</sup> In *Emancipation, the Union Army, and the Reelection of Abraham Lincoln* historian Jonathan White argued that while in Pennsylvania legal statutes and political discussions over disfranchising deserters devolved into a partisan dispute between Republicans and Democrats, the general goal of federal and state legislation to punish deserters as such was a continuation of Republican wartime efforts to police treason in the North.<sup>37</sup> I do not dispute the politically partisan aspects of the disfranchisement of deserters during Reconstruction in Pennsylvania and more broadly throughout the North. Instead I question what the context of disputes over whether deserters should be disfranchised means for the prospects of black soldiers and activists who argued for their right to the franchise based on their loyal service to the nation during the Civil War. Placing these two seemingly disparate narratives abreast of each other they, collectively articulated a narrative of Reconstruction in Pennsylvania where the maintenance of a white male polity, in the aftermath of congressional civil rights legislation and in the midst of constitutional amendments, conformed with state sovereignty over suffrage rights and opposed the biracial political inclusion Northern Republicans forcefully cultivated in the South. The Pennsylvania Supreme Court rulings presented a legal maneuvering that privileged the State Constitution as the authority of suffrage rights which privileged whiteness over loyalty as a standard for suffrage rights.

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<sup>36</sup> William Blair, *With Malice toward Some: Treason and Loyalty in the Civil War Era* (Chapel Hill: The University of North Carolina Press, 2014), 280-286

<sup>37</sup> Jonathan W. White, *Emancipation, the Union Army, and the Reelection of Abraham Lincoln* (Baton Rouge: Louisiana State university Press, 2014), 131-143



Pennsylvania experienced a sustained peace movement that was firmly against the Civil War throughout the war's duration. Most anti-war Pennsylvanians were associated with the Democratic Party. The Democrats used the war, and the increasing tension brought by emancipation and the prospects of racial equality, to win elections and disparage the Republican Party in the public eye. The Democratic Party capitalized on the racial animus Pennsylvanians held towards blacks to gain political power within the state.<sup>38</sup>

In the North the Civil War draft was met by widespread and sometimes violent opposition. The draft offered a substitution and exemption rule meaning that one could either find an able bodied replacement or pay \$300 to be exempted from service. This created a class dynamic to the draft and subsequent opposition. Draft opposition made black enlistment critical for the Union war effort. The federal government used various means to try and quell opposition and maintain enlistment numbers necessary for the war. One method used late in the war was stripping draft deserters of their citizenship and specifically suffrage rights. However the practical enactment of these measures proved difficult and ran aground of states who felt that the federal government was encroaching on their right to determine and delineate political rights.

The Democratic Party in Pennsylvania and the growing anti-war sentiment also correlated with draft desertion and bounty jumping during the war. Based on war substitution for draftees and commutation fees, the Civil War was increasingly seen as class dispute in the North, commonly known as a 'rich man's war and a poor man's fight'.<sup>39</sup> Treason and draft desertion in the North were common place as the Civil War advanced past its initial expected short life span

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<sup>38</sup> Arnold Shankman. *The Anti-War Movement in Pennsylvania, 1861-1865* (Teaneck: Fairleigh Dickinson University Press, 1980)

<sup>39</sup> William Blair, *With Malice toward Some: Treason and Loyalty in the Civil War Era* (Chapel Hill: The University of North Carolina Press, 2014)

of less than a year. President Lincoln, Congress, and the military tried several measures to maintain order in the North and keep a supply of able bodied men for military service. Widespread draft opposition made black army participation more important as the war progressed.

In 1866, the Pennsylvania State Supreme Court decided the *Huber vs. Reily* court case. In this case the plaintiff, Henry Reily, had sued for restoration of his suffrage rights. An election judge had previously revoked Reily's right of suffrage citing that he was a draft deserter for failing to report to the local Provost Marshal in response to his draft papers. In accordance with a federal law passed in March of 1865, as an amendment to the Enrollment Act of 1863 which instituted a Unionist war draft. The amendment stated that desertion was a crime punishable by loss of citizenship and all correlated rights. Reily acknowledged that he was indeed a draft deserter but his counsel argued that "It is incompetent for Congress, under the Federal Constitution, to impair either directly or indirectly the right of suffrage in the states."<sup>40</sup> The Pennsylvania Supreme Court ruled in favor of Reily and restored his right of suffrage but not for the reasons argued by his counsel. The justices dismissed questions raised about the constitutionality of the federal law that deemed it as an *ex post facto* law, that it tried to infringe on the right of states to delegate rights of suffrage, nor did it exact unfair punishment for the crime of desertion. Justice William Strong argued that the act in fact increases a states power to delegate suffrage rights as it saw fit. The court cited in favor for Reily because he had never been formally convicted in a court of law for desertion for which the punishment could subsequently entail disfranchisement. But since he had never been convicted, no punishment for the crime

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<sup>40</sup> *Huber v. Reily.*, 53 PA. 112; (1866).

could be enacted and therefore he was not illegally in possession of the franchise.<sup>41</sup> The court submitted that any penalty incurred without trial was in violation of due process.

Most tellingly though, Justice Strong's majority opinion acknowledged the legality of the congressional act but then undermined the ability to enforce it by arguing that a conviction was first necessary for any punishment of disfranchisement to be carried out against a deserter. The court agreed with the principle offered by Reily and disavowed the local election boards ability to interfere with the right of suffrage of disloyal draft deserters. In a sense, the court's opinion bolstered the power of the state of Pennsylvania to delegate suffrage rights for its citizens that asserted greater state sovereignty within the context of broadening federalism. Congressional legislation sought to punish Union deserters by invalidating their political rights but in practice the Pennsylvania Supreme Court raised the threshold of retribution against deserters so that shirking military service and a citizen's opposition to ones obligation to the nation would not affect rights of suffrage. Strong's opinion, which removed the teeth of the federal legislation, argued that the right of suffrage for state elections, in the absence of a conviction for desertion, would remain determined by the Pennsylvania Constitution, which was racially and gendered exclusive reserved for white males. Also within the court's opinion is the assumption that suffrage is a right of citizenship and Pennsylvania citizens.<sup>42</sup> The Amendment to the Enrollment act stripping citizenship as punishment for desertion did not mention suffrage explicitly. In Reily's argument for suffrage, and supported by the court ruling in his favor, both parties

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<sup>41</sup> *Huber v. Reily*, 53 PA. 112; (1866)

<sup>42</sup> *Huber v. Reily*, 53 PA. 112; (1866)

declared suffrage as part and parcel of citizenship, if not on a federal level then definitely on a state level based on the Pennsylvania State Constitution.<sup>43</sup>

In 1868, the Pennsylvania State Supreme Court heard another case on draft desertion and the right of suffrage. In *McCafferty v. Guyer et al. 1868* plaintiff Edward McCafferty brought suit against the local election board of Huntingdon County. McCafferty had been formally issued his draft papers in 1864. He never reported to the local Provost Marshal and was subsequently listed as a deserter. McCafferty then attempted to vote in the 1866 election for which his vote was denied by the election board based on him being listed as a deserter and in accordance with the disfranchisement amendment of the Enrollment Act passed by Congress in 1865. The original suit was awarded in judgment of the election board to which McCafferty appealed its decision making its way to the Pennsylvania State Supreme Court. The Pennsylvania Supreme Court ruled in favor of the Plaintiff McCafferty. Justice William Strong wrote the opinion for the court citing article three of the Pennsylvania State Constitution that stipulated voting qualifications as “white freeman of the age of twenty-one years, having resided in this state one year” and who had also paid either county or state taxes.<sup>44</sup> The word white had been inserted into the state constitution in 1838 to effectively disfranchise black male voters. Justice Strong affirmed McCafferty’s lawful right to vote in the 1866 election. Justice Strong acknowledged,

It is true, he had been drafted into the military service of the United States, had failed to report after notice of the draft, and he was registered as a deserter, but not having been tried and convicted of desertion, he had not lost his citizenship under the Act of Congress of March 3d 1865. This was decided in *Huber v. Reily*, 53 Pa. 112.<sup>45</sup>

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<sup>43</sup> William Blair, *With Malice toward Some: Treason and Loyalty in the Civil War Era* (Chapel Hill: The University of North Carolina Press, 2014)

<sup>44</sup> *McCafferty v. Guyer et al.*, 59 PA. 109; (1868).

<sup>45</sup> *McCafferty v. Guyer et al.*, 59 PA. 109; (1868).

The opinion of the court, written by Justice Strong, argued that neither Congress nor the Pennsylvania state legislature had the right to deny the franchise to a citizen already meeting all required qualifications to vote. In 1866, the court had ruled that the denial of suffrage based on draft desertion was invalid in the *Huber v. Reily* case because Reily had never been formally convicted of desertion. In June of 1866, the Pennsylvania state legislature passed its own version of the congressional statute. The Pennsylvania law supported the congressional act and certified that anyone deemed a deserter was ineligible to vote. The statute also stated that any unlawful attempt to vote by such persons was punishable as a misdemeanor crime.<sup>46</sup> Whereas the court had decided in favor of plaintiff and acknowledged the suffrage rights of deserter Henry Reily in the 1866 case, Justice Strong determined that the absence of a conviction invalidated any punishment and usurpation to the right of suffrage for Reily. That legal maneuvering would not be used for the McCafferty case since there now existed a Pennsylvania statute on deserter disfranchisement that supplemented the federal law and issued certified deserter rolls to election boards. Instead Justice Strong questioned the state constitutionality of the Pennsylvania law. He questioned whether the legislature had the power to deny anyone the franchise who had been entitled to it under the state Constitution. He asserted that, “A right conferred by the Constitution is beyond the reach of legislative interference.”<sup>47</sup> In the *Huber v. Reily* case Strong’s opinion for the court demanded due process of a trial and conviction, in the *McCafferty v. Guyer et. al* case Strong’s opinion questioned the state legislature’s ability to supersede established principles of the state constitution. Strong asserted that, “It has always been understood that the legislature has no power to confer the elective franchise upon other classes than those to whom it is given by the

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<sup>46</sup> *Laws of the General Assembly of the State of Pennsylvania* (Harrisburg: Singerly & Myers State printers, 1866), 1107

<sup>47</sup> *McCafferty v. Guyer et al.*, 59 PA. 109; (1868).

Constitution, for the description of those entitled is regarded as excluding all others.”<sup>48</sup> Strong implied that the legislature’s attempt to restrict suffrage on any grounds, in this case desertion, was unconstitutional and that rather than suggestions on who is not accorded the right to vote, the constitution stated “who shall not be excluded.”<sup>49</sup> Strong then stated, “therefore the right of suffrage is with us indefeasible.”<sup>50</sup> In this case the court decided that the Pennsylvania law on disfranchising deserters was unconstitutional and therefore invalid.

In the Pennsylvania Supreme Court’s two decisions regarding suffrage rights of admitted draft deserters, both of Strong’s majority opinions place congressional and federal law in opposition to the state constitution of Pennsylvania. Strong advocated for a particular type of state sovereignty in terms of the franchise that reflected the theory of citizenship articulated in the 1862 opinion of Attorney General Edward Bates. In both cases the Justices’ legal rulings and interpretations held that the state constitution retained primacy over both acts of congress and acts of the Pennsylvania legislature to disfranchise deserters already politically empowered by the constitution. In terms of suffrage rights, the strong revolutionary constitutional federalism of this era, espoused by historians like Kaczorowski, was rendered powerless under the principle of state sovereignty that maintained a racial bias in suffrage rights.

Justice Daniel Agnew wrote a minority dissent for the *McCafferty v. Guyer et al.*, case ultimately decided in favor of the plaintiff Edward McCafferty. Agnew agreed with the plaintiff that the right of suffrage delegated by the constitution could not be changed. He supplemented this by revisiting the explicit language of the state Constitution and asserted that the Constitution at no point defined the word freeman and who it described. Agnew dissented with the majority

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<sup>48</sup> *McCafferty v. Guyer et al.*, 59 PA. 109; (1868).

<sup>49</sup> *McCafferty v. Guyer et al.*, 59 PA. 109; (1868).

<sup>50</sup> *McCafferty v. Guyer et al.*, 59 PA. 109; (1868).

opinion and asserted that congress did indeed have the power to disfranchise a citizen of a state asserting that,

The only provision in the bill of rights is that elections shall be free and equal. But elections are not equal when those who refuse to perform their public duties, and to bear equal burdens, are allowed to participate with and to govern those who do. They cannot claim the rights of freemen and at the same time decline to play the parts of freemen. This clause in the bill of rights is no restriction on the power of the legislature to regulate the civil status of those who voluntarily relinquish it by refusing to perform the duty to the community which citizenship requires of such member.<sup>51</sup>

Agnew firmly asserted the connection between citizen and government. Agnew stated that, “The duties of the government and the citizen are reciprocal--protection from the one and fidelity and support from the other.”<sup>52</sup> Agnew then asked rhetorically, “This leads us to the question, does a loss of citizenship produce a loss of suffrage under the state Constitution?”<sup>53</sup> To which he opined that citizens of the state must also be citizens of the United States to be eligible to vote and that, “the conclusion is inevitable that a voluntary renunciation of citizenship by desertion is a relinquishment of suffrage.”<sup>54</sup> Here Agnew capitulated a citizenship that is directly tied to suffrage rights much in league with the definition of citizenship offered by black Pennsylvanians in 1838.

While these two court cases involving draft deserters are in a sense unique, they still give pause to consider a moment when competing ideas citizenship and the rights of suffrage were still being worked out in the aftermath of Reconstruction. Pennsylvania, as a Unionist state with a long history of a *relatively* successful Free Black community, foments a historical reconsideration of ideas surrounding federalism and state sovereignty, citizenship, and suffrage

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<sup>51</sup> *McCafferty v. Guyer et al.*, 59 PA. 109; (1868).

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rights. The North was never a bastion of racial progress for Free blacks and the courts disavowal of disfranchisement as punishment for deserters in deference to the racialized political rights outlined by the state constitution should goad deeper questions on the process of a social Reconstruction, or lack thereof, in the northern states.

Republicans were able to endow citizenship and civil rights upon blacks but initially resisted the conferral of the right of suffrage despite black claims of martial manhood citizenship. In military desertion cases service to the nation is rendered ineffectual in terms of its influence on the rights of suffrage. In the absence of new local or federal legislation towards black suffrage in the North the years prior to 1870 served as a biracial commonwealth, but with political rights and power reserved for white men only.

### *Conclusion*

Through an investigation of northern struggles in the construction and practice of a biracial body politic historians can better understand the Reconstruction Era as well as Gilded and Progressive Eras that witnessed the retrenchment of black civil and political rights throughout the country.<sup>55</sup> Looking specifically at suffrage as a right not bestowed upon blacks or deemed to be a basic right of citizenship we can see the continuities for black life in the North before and after the Civil War. While blacks become recognized citizens and deemed part of the body politic their lack of political rights reduced them to powerless second class citizenship until. The Fifteenth Amendment was intended to remedy that problem but the continued racialized violence, Supreme Court rulings, and lack of lack federal enforcement whittled away the meanings of Reconstruction legislation to bring about equal rights within the nation. In *The*

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<sup>55</sup> Rayford W. Logan, *The Betrayal of the Negro, from Rutherford B. Hayes to Woodrow Wilson* (New York: First Da Cap Press, 1965)



*Political Worlds of Slavery and Freedom*, historian Steven Hahn theorized that free black enclaves in the antebellum North could be viewed as maroon communities similar to those most often found in Florida and the Caribbean based on their physical places of residence and social relationship to general urban centers as the periphery. Given the protracted nature and then withdrawal on Reconstruction policies nation-wide it may be possible to view blacks, both as individuals and communities, as political maroons within the nation in the late nineteenth and early twentieth centuries.<sup>56</sup>

I have argued that black political activists and Attorney General Bates rendered new theories of citizenship in the aftermath of the Civil War, but that *practice* of citizenship enacted by the Pennsylvania Supreme Court disregarded the martial service of black men and authored its own localized theory of citizenship that maintained the state as a white republic in line with federal precedents. The narrative of black suffrage rights in Pennsylvania, and throughout the North, calls attention to notion of American citizenship as volitional. In particular the right of choice by the state in its selection of who is endowed with what rights and whom receives support and affirmation from the state for their rights. Black soldiers that claimed the franchise as a right based on their military service espoused a flimsy rhetoric as the state chose to honor racial classifications over loyalty in determination of suffrage rights. Volitional citizenship is a dual choice where citizens and the state choose each other. How then can the quotidian experiences of blacks in the North in the late nineteenth century be seen as influenced by the rejection of them as full citizens by the state during Reconstruction? Do other citizens then seek to capitalize on their maroon status?

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<sup>56</sup> Steven Hahn, *The Political Worlds of Slavery and Freedom* (Cambridge; Harvard University Press, 2009), 29-44