Fort Pillow

By April of 1864, African Americans had won the right to enlist formally in the US armed forces and flocked to the Army, but still experienced significant inequality, including in their rates of pay. Furthermore, their status remained uncertain. While those who had escaped slavery and enlisted formally were understood by northerners not to be slaves, their citizenship was uncertain and they lacked access to core civil and political rights. They were providing critical reinforcements at a time when the draft was highly unpopular and volunteers were increasingly difficult to recruit, but had not been able to parlay this value into a broad agenda of universal emancipation or of expanding civic access for free blacks and freedmen.

A garrison of around 600 men held a federal outpost in Tennessee on a bluff overlooking the Mississippi River fifty miles north of Memphis. The garrison’s troops were approximately half white and half black; the black artillerymen served under white officers and were charged with holding the strategic position. Confederate Major General Nathan Forrest attacked the garrison with 1500 troops and successfully overcame the resistance. What happened next is contested, but most accounts agree that, after Fort Pillow had fallen, the Confederates killed many of the defeated soldiers.[[1]](#footnote-1) Reports quickly began to surface that the victors had behaved with particular brutality toward the black troops, inflicting a doubled casualty rate.[[2]](#footnote-2) Contemporaneous accounts by Confederates themselves supported this interpretation, with one sergeant describing the horror: “The poor deluded negroes would run up to our men fall upon their knees and with uplifted arms scream for mercy but they were ordered to their feet and then shot down.”[[3]](#footnote-3)

Union survivors of the battle were not slow to condemn the Confederates, and Union-sympathetic newspapers amplified the outrage, portraying the Confederates as lawless individuals who did not respect conventional wartime civilities. Radical Republican newspapers went further; the *Chicago Tribune* demanded retaliation, and attacked Lincoln for his leniency toward the Confederacy.[[4]](#footnote-4) Lincoln acknowledged the need for retribution if a massacre was indeed shown to have occurred.[[5]](#footnote-5) Nathan Bedford Forrest was concerned enough about the public outcry to generate his own defensive report that blamed the excessive death toll on Union troops who refused to surrender, but the tide of anger influenced even the Confederate press. By May, their accounts had shifted from, in Cimpher and Mainfort’s reading, gloating over an overwhelming victory and chastening of blacks to denial that any mass killing had occurred.[[6]](#footnote-6)

Congress convened an investigation through joint resolution on April 21, 1864.[[7]](#footnote-7) The matter was referred to the Joint Committee on the Conduct of the War. This committee, convened by the 37th and 38th Congress, was a powerful and political entity. After the Union’s initial military missteps, Congress became concerned that the war was not being prosecuted with enough vigor and engagement. Concern about military losses interacted with longer standing suspicion of a professional and national standing army as “inherently hostile to republican institutions.”[[8]](#footnote-8) Congress empowered the committee with subpoena authority and a broad mandate to investigate military affairs, including “major military defeats, the administration of military departments, the treatment of Northern prisoners of war, alleged Confederate atrocities, and a host of other matters.” The committee took both its investigatory and political mandates seriously, issuing official reports and sometimes leaking its findings to sympathetic press outlets. [[9]](#footnote-9)

The committee appointed Benjamin Wade and Daniel W. Gooch, both prominent members and Republicans, to manage the investigation. With the committee’s stenographer, they traveled to Cairo and Mound City in Illinois, Columbus in Kentucky, and both Fort Pillow itself and Memphis in Tennessee to collect witness testimony and sworn statements.[[10]](#footnote-10) The investigation produced a report and over 150 pages of sworn testimony and affidavits that, taken together, presented an inflammatory account of Confederate war atrocities. Black survivors reported the Confederates encouraging each other to kill them, advancing upon them as they tried to surrender shouting, “no quarter!”[[11]](#footnote-11) Black artilleryman Benjamin Robinson testified that Nathan Bedford Forrest had ridden over him with his horse “three or four times;”[[12]](#footnote-12) and George Shaw, also a black artilleryman, was shot by a Confederate soldier who damned him for “fighting against your master,” after which he was thrown into the river and witnessed Confederates shooting three teenage boys in the forehead as they begged for their lives.[[13]](#footnote-13)

These accounts received corroboration from white witnesses, both military personnel and civilians. Captain Thomas Gray recounted a conversation he had with several Confederates after being captured:

I heard the rebels say repeatedly that they intended to kill negro troops wherever they could find them; that they had heard that there were negro troops at Union City, and that they had intended to kill them if they had found any there. They also said they had understood there were negro troops at Paducah and Mayfield, and that they intended to kill them if they got them. And they said that they did not consider officers who commanded negro troops to be any better than the negroes themselves.[[14]](#footnote-14)

A sergeant reported that when he surrendered, the Confederate soldier informed him that they did not shoot white men, but quickly hustled him aside and continued shooting the black soldiers fleeing toward the river.[[15]](#footnote-15)

The investigation elicited evidence of several different alleged atrocities. One was the intentionally brutal treatment of black troops, who were not recognized by the Confederates as soldiers entitled to the protections of the laws and norms of warfare. Witnesses also testified that Confederates had buried Union soldiers alive, trapped others and burned them alive, hacked others to death with bayonets, killed civilian women and children, despoiled and robbed the bodies, and finally failed to feed the surviving prisoners adequately. [[16]](#footnote-16)

From this evidence, Benjamin Wade and Daniel Gooch developed a seven-page report, which they submitted to Congress. The report opened with the inflammatory claim that “the atrocities committed at Fort Pillow were not the result of passions excited by the heat of conflict, but were the results of a policy deliberately decided upon and unhesitatingly announced.”[[17]](#footnote-17) The Confederates, at Fort Pillow but elsewhere as well, were consciously targeting black regiments and their officers and denying them the status of soldiers: “it is the intention of the rebel authorities not to recognize the officers and men of our colored regiments as entitled to the treatment accorded by all civilized nations to prisoners of war.”[[18]](#footnote-18)

With this wrong established at the outside, the report proceeded to provide several additional examples of the “bad faith and treachery that seem to have become the settled policy of Forrest and his command.”[[19]](#footnote-19) While the troops had mistreated black soldiers by not affording them the status of soldiers, they had also mistreated women and children by using them as human shields, preventing Union troops from firing upon them “in a most cowardly manner.”[[20]](#footnote-20) The report described the misdeeds reported in the testimony in the most lurid of fashions, characterizing them as devilish butchery, “without a parallel in civilized warfare, which needed but the tomahawk and scalping-knife to exceed the worst atrocities ever committed by savages.”[[21]](#footnote-21) The Committee clearly contemplated the report’s use for political suasion; Congress resolved to fund the printing of 40,000 extra copies for the use of its members.

The Committee’s report, in addition to its obvious application as a means of whipping up rage among union sympathizers and hopefully encouraging more enlistment, reinterpreted the contributions and value of black troops. The treatment of black troops and their commanders as less than soldiers was the prime act identified as violating the fundamental ground rules of warfare. The Committee consciously placed this wrong on a plane of equivalence with the other atrocities mentioned, all of which when taken together situated the Confederate troops as lawless savages who violated the fundamental principles of war held in common by civilized white men.

The Committee’s rhetoric inverted racial understandings, classifying the Confederates as non-whites because of their refusal to acknowledge the soldier identities of Northern black troops. Of course, this single investigation did not change the archetypical understanding of soldiers as white men, nor did it acknowledge the military work of the many blacks who were not formally enlisted.[[22]](#footnote-22) But it did expand the archetype enough to admit within it enlisted black men who were fighting on the behalf of their country. The testimony taken underlined this shift in status, which followed the men’s performance of their military role: questioners asked about the black survivors’ backgrounds, often eliciting that they had been slaves prior to enlisting and becoming artillerymen. To refuse to recognize black soldiers’ performance as soldiers would, going forward, have serious consequences for the Confederacy. While Lincoln had pledged in 1863 to retaliate against the Confederates if they did not treat black troops according to the rules of war, the outcry over Fort Pillow strengthened national resolve to respond in kind when black soldiers were not treated as prisoners of war, held in poor conditions, or sold as slaves.

A few weeks after the massacre (as Wade and Gooch were investigating), Mary Booth, the widow of the unit’s white commander, Major Lionel Booth, visited Fort Pillow with the intention of recovering his body. Under a flag of truce, she viewed the opening of a grave identified as that of her husband, but contemporaneous accounts differed as to whether the body was actually his.[[23]](#footnote-23) Three weeks after this experience, she called on President Abraham Lincoln and he offered his condolences. She used the opportunity, however, not to press her own bereavement, but rather to plead on the behalf of the families of the black soldiers killed under her husband’s command. Lincoln wrote to Charles Sumner, urging him to promote a new policy that “widows and children *in fact*, of colored soldiers who fall in our service, be placed in law, the same as if their marriages were legal, so that they can have the benefit of the provisions made the widows & orphans of white soldiers” and exhorting him to see and hear Mrs. Booth for himself.[[24]](#footnote-24) Sumner, who was already a member of the Senate committee that would soon lay the foundation for the Freedmen’s Bureau, took the widow’s plea under consideration, and the stage was set for incorporation of the family members of black soldiers into the system of compensation being developed for all soldiers.

The Fort Pillow massacre did not cause the federal government to cross a line from a commitment to mere emancipation to a more robust program of egalitarian reform. The moment, however, was critical in the arguments that it provoked. It became clear that mere emancipation was not enough, and that what blacks and their advocates wanted was a robust citizenship that destroyed the vestiges of a status system based in race that captured both newly emancipated slaves and free blacks whose families had been free for generations. Repeatedly, black leaders and their advocates argued that their performance of the civic duty of military service entitled them to robust citizenship, a citizenship that presumed a free family subject to the protection and governance of a rights-bearing father. In pressing these arguments, they were transforming citizenship, but also working alongside other transformative efforts that sought to leverage military service into civic recognition, rights, and benefits.

By the time of the Fort Pillow massacre, the character of the Civil War had changed definitively. In the most basic of terms, it had transformed from a rejection of a secession movement sparked by a longstanding conflict over the expansion of slavery into the territories into an existential battle over slavery and the character of the American nation. For African Americans, the war also shifted from one in which they were the objects of struggle to one which, even from others’ perspectives, they were agents. The United States had incorporated large numbers of new citizens previously – both the Louisiana Purchase and the Treaty of Guadalupe Hidalgo created new Americans in a wholesale fashion through the stroke of a pen – but emancipation created a qualitatively different set of challenges and concerns.

This chapter tells the story of how these developments unfolded. It summarizes the series of policy transformations that produced a tentative commitment to citizenship for African Americans over the course of the war and immediately afterward. First, it discusses military mobilization for the union, addressing how the need for manpower encouraged both appreciation for those who served and empowered blacks to press for rights. The analysis, however, rather than retelling the well known historical narrative of emancipation and constitutional reform, focuses on how African Americans and their advocates mobilized service and sacrifice as a means of leveraging civic recognition, and how those claims were met. As evinced by policymakers’ interactions over the status of African Americans, recognition of service and sacrifice mattered both in securing advances absolutely and in the manner in which advances were secured for women and men, as individuals and as family units. Initially, service proved a powerful tool with which to leverage not just material advancement, but meaningful change in status. However, its value was limited in the aftermath of the war and the status gained quickly proved to be both ephemeral and limited in gendered terms. Because much of the recognition of citizenship that mattered in material terms took place on the state level, the chapter looks at state legislative reform and legal struggles over rights as well as what was happening on the federal level.

Contraband and Confusion

Despite the increased and increasingly acrimonious polarization over slavery’s expansion in the decade prior to the war, the social and political conditions for free blacks were unequal and hostile in the north and many southern states strongly encouraged their free blacks to leave their terrain. The 1850s saw blacks’ rights erode under increasingly heavy-handed federal enforcement of the Fugitive Slave Act and the Court’s issuance of its ruling in *Dred Scott*.[[25]](#footnote-25) In the north, blacks had the distinction of being free men and women, but little else. Formal legal citizenship was almost exclusively a creature of state law (which, as Mark Graber notes, could have supported a ruling in either direction in *Dred Scott*), but even states that grudgingly acknowledged citizenship undercut its meaning by establishing a particularized black status, curtailing drastically their right to have rights. Their status as citizens was so uncertain that some wealthy free blacks who wanted to travel abroad found themselves unable to secure U.S. passports.[[26]](#footnote-26)

When the Civil War began, manpower was not a significant problem for the Union. Volunteers eagerly leaped at the chance to serve the nation in what everyone anticipated would be a quick and glorious conflict. The volunteers included free blacks, but legislation passed after the Revolutionary War barred them from service in militias, which were the primary organizational device for mass military service. [[27]](#footnote-27) While Northern opposition to black service was high when the war began, Secretary of the Navy Gideon Wells moved in September 1861 to recruit more black volunteers, and ultimately around 30,000 of the Navy’s 120,000 enlisted men were black.[[28]](#footnote-28) Nonetheless, the initial stance of Lincoln and his military commanders was opposed to black military service, and at the war’s outset, there seemed to be little reason to change the policy of opposition.

The initial legal frame designed to grapple with slaves who escaped during the war was Union commander General Benjamin Butler’s designation of them as contraband of war subject to confiscation under the rules of war. Butler saw the act of confiscation as emancipatory not only for the men who offered their services, but for the women and children who accompanied them.[[29]](#footnote-29) He wrote to Lieutenant General Scott that his initial theory of simply declaring free and enlisting the able-bodied in service to advance the Union cause did not quite fit the complexities of the flood of refugees from slavery:

The inhabitants of Virginia are using their negroes in the batteries, and are preparing to send the women and children South.  The escapes from them are very numerous, and a squad has come in this morning to my pickets bringing their women and children. . . .  I am in the utmost doubt what to do with this species of property.  Up to this time I have had come within my lines men and women with their children–entire families–each family belonging to the same owner.  I have therefore determined to employ, as I can do very profitably, the able-bodied persons in the party, issuing proper food for the support of all, and charging against their services the expense of care and sustenance of the non-laborers, keeping a strict and accurate account as well of the services as of the expenditure having the worth of the services and the cost of the expenditure determined by a board of Survey hereafter to be detailed.  I know of no other manner in which to dispose of this subject and the questions connected therewith.  As a matter of property to the insurgents it will be of very great moment, the number that I now have amounting as I am informed to what in good times would be of the value of sixty thousand dollars.[[30]](#footnote-30)

Butler perceived the issue as a military one – the shift in capacity was valuable both to deprive the Confederates of necessary labor and to enhance the Union’s workforce, but how to handle the dependents of those who offered their labor was “political question and a question of humanity”; Butler felt that the humanitarian issue was quite clear, but that he had no “right to judge” the political considerations, which he also forwarded to the Secretary of War.[[31]](#footnote-31) Butler himself was not in favor of abolition; he had campaigned for John Breckenridge in the 1860 election and as late as April of 1861, had offered the services of his Massachusetts troops to suppress a rumored slave revolt in Maryland.[[32]](#footnote-32) Nonetheless, Butler’s stance quickly gained notoriety, and slaves escaped to cross Union lines, but no uniform policy was yet in place to deal with the mass of refugees, volunteers, and dependents.

The Lincoln Administration moved forward, but with great caution. Historian Paul Finkelman argues that “emancipation required the convergence of four preconditions involving legal and constitutional theory, popular support, and military success.”[[33]](#footnote-33) As the war intensified, the principle that personal property used in combat could be confiscated seemed the most promising avenue in legal terms. In August 1861, Secretary of War Simon Cameron clarified that, while the escaped slaves from states not in rebellion were still subject to the strictures of the Fugitive Slave Act, the property rights of slave owners in rebellious states had to give way before military exigency and the forfeiture deserved by their own treasonous conduct.[[34]](#footnote-34) Congress quickly followed up, codifying limited confiscation with the first Confiscation Act; the act allowed seizure of slaves who were serving the Confederacy but implemented nothing broader.[[35]](#footnote-35)

Opinions within the military varied significantly. John Dix, a commander of Union forces in Baltimore, issued a proclamation in November assuring white residents that the troops “will invade no rights of person or property. On the contrary, your laws, your institutions, your usages will be scrupulously respected . . . Special directions have been given not to interfere with the conditions of any persons held to domestic service.”[[36]](#footnote-36) In contrast to Dix, Major General John Frémont issued a proclamation declaring immediate emancipation for Missouri’s slaves. However, Lincoln countermanded Fremont’s proclamation, fearing that this act would provoke Kentucky into secession.

Uncertainty prevailed as the Union forces advanced. In Florida, some commanders actively sought to return slaves to loyal slaveholders, while slaves escaping from South Carolina and Georgia’s more recalcitrant Confederates found warmer welcomes. South Carolina Sea Island slaves gained practical if not legal freedom when they began managing and farming abandoned land under the protection of the Union army and navy.[[37]](#footnote-37) The second Confiscation Act, passed in 1862, authorized the forfeiture of any slave of a Confederate official, but applied only in areas in which the Union held control. In July, Lincoln sent a draft bill to Congress that would have provided compensation to any state that agreed to eliminate slavery, but given the timing, its significance was more symbolic than practical. At the same time, Lincoln privately informed Secretary of State Seward and Secretary of the Navy Gideon Wells that he intended to emancipate the slaves.[[38]](#footnote-38) On the ground, in some places events and military exigency began to overtake legal developments; General David Hunter, in command of operations in South Carolina, Georgia, and Florida, actively recruited black troops and attempted to free all slaves in his region because he viewed slavery as incompatible with martial law.[[39]](#footnote-39)

The modestly encouraging signs coming from some of Lincoln’s officers, Congress, and Lincoln himself did not go unnoticed. Slaves sought out Union army camps and either stayed in close enough proximity that Confederate soldiers and slave catchers were unwilling to pursue them or tried to barter for their freedom in exchange for provisions and strategic and geographic information.[[40]](#footnote-40) Federal policy formally favored only the liberation of slaves connected directly to the Confederate cause, while loyal slavemasters continued to enjoy entitlement to return of their escapees, but slaves sought to exploit both formal and informal loopholes and sympathies to advance the cause of emancipation.[[41]](#footnote-41) After the passage of the Second Confiscation Act, they offered themselves up as laborers, relieving whites of the backbreaking duties associated with creating and maintaining military encampments. [[42]](#footnote-42) General Sherman, no great advocate for black equality, nonetheless saw the strategic and practical value of this labor and issued an order on August 8, 1862 that authorized the employment of fugitive slaves, reserving for later a judicial determination of their status based on their masters’ loyalty.[[43]](#footnote-43)

The meaning of emancipation itself, however, was unclear. The first formal territorial emancipation engaged by Congress during the war was the freeing of the remaining slaves in the District of Columbia in April of 1862. The proclamation followed a period of turmoil in the District, which harbored many fugitive slaves and pursuing slave catchers; even moderate Northerners were appalled as DC’s jails filled up with captured blacks who were abused and re-enslaved with little or no meaningful process.[[44]](#footnote-44) The DC Board of Aldermen instructed Congress that abolition would be disruptive and dangerous, as it would “convert . . . this city, located as it is between two Slaveholding States, into an asylum for free negroes, a population undesirable in every American community.”[[45]](#footnote-45) Congress nonetheless abolished slavery, but the emancipated slaves had earned little more than an assurance that their bondage to masters could no longer be enforced.

As time passed, Union officers in the field increasingly recognized the worth of black labor, the capacity of blacks to fight in organized units, and the critical knowledge that slavery’s refugees held about terrain and Confederate preparations. While “contraband” remained the label for escaped slaves, military officials and Union policymakers all the way up to Lincoln shifted to a mindset that fugitive slaves, even those of loyal masters, would not return to slavery. Emancipation had become a central war goal, and black military service was incorporated alongside emancipation, reflecting the desperate need for more manpower but framing it as a liberative choice.[[46]](#footnote-46)

The Militia Tradition, the Draft Controversy, and Black Mobilization

As noted above, northern blacks expressed their eagerness to enlist, and counted as allies and supporters the governor of Massachusetts, one of Kansas’s Senators, and two generals (John Phelps, serving in the Department of the Gulf, and David Hunter, who commanded Union operations in coastal South Carolina, Georgia, and Florida).[[47]](#footnote-47) Benjamin Butler, while initially skeptical enough to force Phelps out, soon came to the conclusion that black enlistment both of free northerners and auto-emancipated slaves was a sound military and political strategy.[[48]](#footnote-48) Despite the enthusiasm among blacks and their advocates, however, the War Department moved with great caution, viewing black manpower primarily as a labor supplement and a temporary stopgap. The war’s turn for the worse and the dawning recognition that it would not be quickly won shifted both public views about the usefulness of black military capacity and the Union government’s stance.

1863 marked a significant turning point. Early in the war, the states were almost entirely responsible for mustering and managing the militias that formed the bulk of the Union’s fighting forces. This followed the longstanding practice in the United States dating back to the Revolution that, while a national fighting force could be assembled in name, the implementation of mobilization was entirely a state-based process. While militias had been called up in prior conflicts and units mobilized to address military threats and opportunities, the most significant being the War of 1812 and the Mexican American War, no national recruitment efforts had ever been made and Congress’s power was somewhat uncertain. Citizenship was likewise primarily determined and delimited by state laws and had little independent standing aside from Congress’s power to determine the rules and regulations regarding naturalization.

After starting in 1862, a national draft was fully implemented in 1863. Rather than creating a unified federal system, the Lincoln Administration and Congress sought to stimulate volunteering and facilitate the states’ management of it.[[49]](#footnote-49) States were simply responsible for providing a proportional quota of men; if enough men volunteered, no draft call was issued. Individuals could seek exemptions for a variety of reasons and could purchase substitutes.[[50]](#footnote-50) Between 1863 and 1865, Congress authorized four national drafts calling more than 750,000 men, but from these calls, fewer than 50,000 were held to service in the Union armed forces.[[51]](#footnote-51) The draft, something never before undertaken at the federal level, was both politically and constitutionally controversial; in fact, the Supreme Court of Pennsylvania briefly held it to be illegitimate because it exceeded the boundaries of Congress’s power and usurped the traditional authority of the states to establish and manage militias.[[52]](#footnote-52)

The struggle over the draft’s legitimacy revealed the tensions within both federalism and the concept of citizenship. Nowhere was this tension more evident than in Wisconsin’s consideration of the draft’s constitutionality in 1863. The matter reached the Wisconsin Supreme Court when a man who had been born in Prussia was drafted on the basis of having declared his intention to become a US citizen, though he was not yet a citizen.[[53]](#footnote-53) He objected on that basis, since the law under which he was drafted specified only citizens. The Wisconsin Court, relying on *Dred Scott*, found that national and state citizenship were distinct, articulating a conception of state citizenship that allowed for the bestowing of privileges and immunities upon individuals that need not be recognized in any other state.[[54]](#footnote-54) The Court then went on to observe that individuals like Wehlitz held the right to vote, which implied citizenship: “If the granting of these rights, the right to participate in establishing the very framework of the government, of an equal voice in choosing all officers under it, and the right to hold all offices with a very few exceptions, does not indicate an intention to create them citizens of the state, it is difficult to imagine from what such an intention could be inferred.”[[55]](#footnote-55) This reasoning underlined the associational links between the exercise of various civil and political rights, citizenship, and service, giving activists some hope that the associational chain might ultimately be traced back in the other direction to leverage both more meaningful national citizenship and a complete and indivisible package of rights that would go along with it.

The first Enrollment Act, passed in 1863, set the draft’s national parameters. All “fit male citizens and aliens intent upon becoming citizens” ranging between ages twenty and forty five were subject to being called, though they could either provide a substitute or pay a $300 commutation fee to avoid service.[[56]](#footnote-56) States and localities had little desire to coerce service, which would both present them in a shameful light and possibly foment unrest, so they turned to the strategy of offering bounties to achieve their quotas. This led to the rise of bounty brokers, who advertised their services in local newspapers to find young men willing to serve as substitutes or to fill out quotas in particular areas for the right price.[[57]](#footnote-57) Bounty brokering quickly became an unsavory business, rife with fraud and coercion, as localities struggled to fill their quotas and individuals increasingly unwilling to serve sought substitutes.[[58]](#footnote-58)

The need for manpower, however, opened opportunities for free blacks seeking to serve. The Secretary of War authorized the mobilization of black regiments from Rhode Island, Massachusetts, and Connecticut, but denied this option to the governor of Ohio. The governor of Massachusetts authorized George Stearns, a radical abolitionist, to organize recruiting, and he hired black agents to seek enlistees throughout the north.[[59]](#footnote-59) Stanton also authorized the recruitment and organization of former slaves in the south, rendering the entire process more systematic. “In May 1863, the War Department established the Bureau of Colored Troops to regulate and supervise the enlistment of black soldiers and the selection of officers to command black regiments.”[[60]](#footnote-60)

The systems for recruiting soldiers, however, was not managed nationally and while the national government articulated its manpower needs, states and localities were largely responsible for making it work on the ground. This led to adverse outcomes for many recruits. Free blacks wanted to join the military both to fight for an end to slavery and to benefit their families. Their eagerness made them easy targets for unscrupulous bounty brokers. Furthermore, localities and states paying enlistment bonuses often relied on private supplementation, and both public and private funders were primarily interested in supplementing the incomes and supporting the families of their own residents.

In Massachusetts, for instance, the enabling legislation authorized the payment of benefits only to dependents who lived in the state. As noted above, Massachusetts had aggressively recruited throughout the north to fill its three black regiments, which “provided critical numbers towards the state’s draft quota . . . and spared many Massachusetts residents form the prospect of forcible conscription.”[[61]](#footnote-61) While Governor Andrew’s agent in New York City made him aware of the issue even before general conscription began in 1862, the Massachusetts legislature never closed this loophole.[[62]](#footnote-62) Worse yet, dependents of Massachusetts enlistees who sought benefits from New York were denied because the enlistees were not supplementing New York’s numbers.

Free blacks residing in the North alone, however, could not meet the Union’s needs; the Superintendent of the Census estimated a black male population of draft age only totaling 46,000 men.[[63]](#footnote-63) The most readily accessible pool of potential recruits were in border slave states that had not seceded and in Confederate areas that had been subdued by Union forces, but initially the Union was hesitant to alienate loyal slaveholders by actively recruiting these men.[[64]](#footnote-64) Ultimately, though, both free blacks and slaves tipped the balance, the free blacks by responding enthusiastically to recruiters and enhancing the Union’s military capacity, and slaves by fleeing behind Union lines and offering their services formally and informally. Indeed, the need for additional bodies to feed the maw of the war grew so great that Confederate authorities began to enlist slaves in 1865, promising freedom not only to them but to their immediate families as well.[[65]](#footnote-65)

In addition to the lure of freedom for themselves, Congress encouraged slaves to volunteer by offering emancipation to their wives and children. After the Emancipation Proclamation, this policy had no meaningful effect in the states in rebellion, since escaped slaves could only secure their families’ freedom if their wives and children also escaped, but it proved controversial in the border states. Kentucky’s high court ruled in *Corbin v. Marsh* in 1865 that the provision was unconstitutional under the federal constitution. In the course of doing so, the court laid out its theory of the limited nature of war powers, and the need to maintain constitutional norms and standards: “the Constitution was made even more for the turbulence of war than the calm of peace. And, prudently contemplating seasons of war, it gave to the general government all the powers deemed necessary or safe for upholding its own supremacy, preventing usurpation, and maintaining the Union in war as well as in peace.”[[66]](#footnote-66) In this reasoning, even the necessary and proper clause read in conjunction with Congress’s delegated war powers was insufficient to allow the abrogation of any “fundamental and paramount law,” among which was the protection of the takings clause.[[67]](#footnote-67) While the court acknowledged the federal government’s authority to enlist slaves to address military necessity, it limited this power to “the use of a slave during the prescribed period of military service,” questioning the capacity to emancipate the soldier-slave and rejecting the idea that this power might extend to a slave’s family. A drafted soldier, after all, had no “motive power or will,” rendering it peculiarly inappropriate to induce volunteer service on this basis among a population that held no legal will.[[68]](#footnote-68) Despite the congressional act, the court ruled that the slave’s – now under federal law a freedman’s – enlistment could not legally divest his wife’s owner of his title to her without compensation.

The case would be merely a historical curiosity in light of the Thirteenth Amendment’s termination of its relevance, but the reasoning illustrates the tangled and rapidly shifting nature of status questions in a world in which some policymakers were frantically casting about for means of preserving the old order. The category of soldier-slave that the court attempted to construct based on its observation that many soldiers were compelled to serve through the draft collapsed in the face of the voluntary nature of many former slaves’ enlistment. The very act of enlistment itself in its voluntarism effected a destruction of slave status under federal law and in reality, rendering it exceptionally difficult to recreate the status. The government’s refusal to engage in any kind of valuation process, simply capping compensation at $300, underlined the status transformation and tied it specifically to military enlistment, whether as a fully voluntary enlistee, a draftee, or a substitute. Once enlistment was accomplished, and if required, a bounty for enlistment had been paid to the master, the slave was no more.

The status of soldier, as Congress acknowledged through successive acts providing for the liberation of soldiers’ immediate families, required a free family behind that soldier. His acquisition of paternal authority as a free man demanded an object, although as the dissent in *Corbin* acknowledged, the initiation and organization of black family labor was different, with both boys and girls working at younger ages, and women participating in heavier labor.[[69]](#footnote-69) Nonetheless, the dissent underlined and explained the incoherence of the majority’s reasoning because of its failure to address the status question:

Slaves have no legal right to property, nor compensation for their service, for these are all merged in their owners therefore government can not legally compensate the slave for military service whilst a slave, for this would go to the master. The slave could not be expected to peril his life, make an efficient soldier, or do deeds of daring and gallantry. These alone are inspired by the higher, nobler sentiments and incentives of the free man. What, indeed, has the slave to fight for? Not country; not liberty; not wife or child; not property; not even compensation. That government that would still enslave him, his wife and children, can not call him to its standard and defense as a countryman, for he has no rights in common with its free people, white or black; not as a husband, for he has no marital rights recognized by law, nor, indeed, any legal wife; not as a father, for by law he has neither the right to the service, nor society, nor pupilage of his children; not as the owner of house and home or property, for he and all his acquisitions belong to another by law.[[70]](#footnote-70)

Freedom, and a de minimus capacity to exercise undivided patriarchal authority within the home, were the necessary conditions for black men to serve as soldiers. This de minimus patriarchal authority required the freedom of the soldier’s immediate family members. Finally, to act properly as a patriarch, the soldier had to have defensible marriage rights within the state, property rights, and the right to compensation. While soldiers’ compensation did have federal overlay, the other rights mentioned were artifices of state, not federal, law and depended upon state enforcement. This structure would ultimately lead Congress to enact federal enforcement of civil rights not as a primary method of securing them, but rather as a backstop in the event that the states failed to fulfill their responsibilities.[[71]](#footnote-71)

As black soldiers, including an increasing number of non-commissioned officers, filled the Union ranks, some distinctions persisted between free blacks and former slaves. Their interests and aspirations were not completely aligned, although all hoped to see slavery’s permanent destruction as a consequence of the war. Former slaves “may well have seen military service as a partial payment for their liberty,” a narrative reinforced by officials in the Lincoln administration and upper echelons of the military.[[72]](#footnote-72) Free blacks, however, hoped for more and aggressively pressed for more opportunities to serve as commissioned officers and worked with white anti-slavery activists to challenge inequality in pay and treatment.[[73]](#footnote-73) They led the way in framing the arguments for enhancing black status as payback for military service and for black enlistment to continue to pressure the federal government to go further than bare emancipation.

The American Freedmen’s Inquiry Commission, promoted by the leading congressional opponents of slavery, bolstered the arguments for aggressive recruitment of black soldiers in their preliminary report to the Department of War, issued in June of 1863. The report advocated strongly for recruiting and placing “two hundred thousand or more” black troops into the field by the end of the year, which would help the Union’s cause and advance the race itself. “Docility, earnestness, the instinct of obedience, these are qualities of the highest value in a soldier, and these are characteristics, as a general rule, of the colored refugees who enter our lines.”[[74]](#footnote-74) The authors also recommended the use of a hundred thousand more refugees for military labor but cautioned that the most effective mobilization would require “strict enforcement of the orders issued by the government, that all colored refugees be treated with justice and humanity.”[[75]](#footnote-75)

While the report advocated for implementing conscription among the fugitives, the Commission believed that the need for coercing military service would be small if the case for service were presented properly:

The more intelligent among these people not only feel that it is their duty to fight for their own freedom, but . . . many of them can be made to understand that only by proving their manhood as soldiers – only through ha baptism of blood – can they bring about such a change in public opinion as will ensure for their race, from the present generation in this country, common respect and decent treatment in their social relations with whites.[[76]](#footnote-76)

Encouraging enlistment through any reasonable means before resorting to conscription was wise in the commission’s view because it would further encourage slaves to flee to take up arms, both depriving the confederacy of their labor and enhancing the Union’s military might and supportive labor capacity.[[77]](#footnote-77)

Indeed, by the end of 1863, the Union had fully come around to enlisting blacks wholesale. “The question then became how soon and how many, not if, Northern freemen could be brought under arms, with Secretary of War Stanton urging on the Northern governors.” Northern businessmen, concerned about the loss of labor capacity, pressed for aggressive recruitment among emancipated slaves in the liberated areas of the South.[[78]](#footnote-78) Northern recruiters swarmed into the occupied territories seeking men to fill their states’ quotas. Likewise in the loyal border states, as recognition grew that slavery would not survive the conflict, the tensions over black eagerness to serve diminished as black volunteers lessened the need to draft massive numbers of white soldiers.[[79]](#footnote-79)

Advocates for blacks, including black leaders, believed that “If national conscription were adopted, it would be clear that state sovereignty and theories of federalism had been discarded in favor of national power when it became necessary. Additionally, it would legalize a military policy which would increase pressure toward general abolition and ultimate citizenship status for blacks.”[[80]](#footnote-80) The recruits and their advocates were well aware by this time that the Union now relied upon their willingness to serve to maintain the war effort. They sought to leverage this necessity, but even as they explored the opportunities opened, they were fighting for recognition and equality within the service.

Inequality and strategies of resistance

Once enlisted with the Union, black soldiers faced marked inequalities. Many commanders used them primarily for exhausting physical labor, allowing white men to go serve on the front lines. Believing them to be hardier than their white counterparts, these commanders ordered them to work longer and harder, breaking down their bodies and presenting heavier demands for replacement clothing, the cost of which was deducted from their monthly pay of $7.[[81]](#footnote-81) This move was particularly galling, as unequal pay was quickly institutionalized for black and white soldiers.[[82]](#footnote-82)

When the War Department initially authorized black enlistment, promises of equal pay floated about. The governors of Massachusetts and Ohio both indicated that they had this understanding. Governor Andrew stated in a letter to an assistant superintendent managing contraband troops, “I know, as a matter of memory, that the subject of compensation of the colored troops was distinctly spoken of . . . by the Secretary of War . . . and I know that their pay, &c., was distinctly agreed to be the same pay, &c., awarded to our other volunteers.”[[83]](#footnote-83) Governor Tod’s very short letter to the Secretary of War informed him that his black regiment was progressing “handsomely” and then stated pointedly, “They are expecting the usual pay & bounty allowed white Soldiers. Will they get it?”[[84]](#footnote-84) Stanton informed him that the government would only be able to provide $10 per month and no bounty but advised the troops to “trust to State contributions and the justice of Congress at the next session.” This prompted Tod to respond in frustration that Stanton should have authorized him to raise troops under the same law providing for recruiting white troops.[[85]](#footnote-85)

Other whites involved in recruiting black soldiers called out the injustice of this policy. The chair of Pennsylvania’s committee noted that blacks were subject to the draft on the same terms as whites even though the Department of War had issued a circular in July forbidding blacks from serving as substitutes for whites because of the disparate pay. He argued to Stanton that the Attorney General’s recognition of blacks as citizens in late 1862 implied that the differentiating legislation, passed in July of 1862, was no longer valid.[[86]](#footnote-86) Change was nonetheless slow to come, requiring a good deal of pressure from advocates for equality and from black troops themselves.

Particularly active in the pay struggle were black non-commissioned officers, who received only the paltry $10 per month provided in the Militia Act for all black soldiers, while even white privates received $13 per month and regimental sergeants $21 per month. As they tended to be both well informed about the inequities and literate, they wrote numerous letters to protest the situation.[[87]](#footnote-87) Massachusetts Sergeant Stephen Swails’ letter, endorsed by his commanders, presented his argument that he had enlisted under the understanding that he would be treated equally and that, since enlisting, he had “performed the duty of a soldier, and have fulfilled my part of the contract with the Government.”[[88]](#footnote-88) The government, however, had not upheld its side of the bargain “in as much as it refuses me the pay, and allowances of a Sergeant of the regular Army.” He therefore “respectfully demand[ed]” to be mustered out of service.[[89]](#footnote-89) A sergeant from Tennessee advocated on behalf of himself and his troops, whom he characterized as a regiment of “southern birth” who “consequently have no Education.” He continued, “not so with my self I was Freeborn and Educated to some extent which makes me know we know that we have never had our Just Rights, by the Officers who command us.”[[90]](#footnote-90)

As the Lincoln Administration and Congress continued to waffle on the pay issue, black troops became increasingly restive. The issue was both one of principle and critical in material terms. Particularly for soldiers who were supporting families, the lower pay they received, out of which their clothing allowance was also sometimes deducted, was inadequate to their needs, especially since many were not receiving any extra state allotments or bounties because they had been recruited from states other than the ones in which their regiments were organized. Especially galling to northern enlistees was the application of the pay scale provided in the Contraband Act to them. As Corporal James Henry Gooding wrote to Lincoln himself, “Their service is undoubtedly worth much to the Nation, but Congress made express, provision touching their case, as slaves freed by military necessity, and assuming the Government, to be their temporary Guardian: -- Not so with us – Freemen by birth, and consequently, having the advantage of *thinking*, and acting for ourselves, so far as the Laws would allow us.”[[91]](#footnote-91)

Even more enraging was the situation of the officers of the Third Regiment of the South Carolina Infantry, who had enlisted and been raised to the rank of noncommissioned officers prior to the passage of the 1862 Act. Eventually the Act caught up with them, and their pay, which had been initially the same as any other NCOs, was reduced to the minimal rate paid to all black troops.[[92]](#footnote-92) Worse yet, their families’ rations were reduced and then eliminated entirely. In November of 1863, when they and their commander pleaded for an alteration of these disgraceful circumstances, they were encouraged to press their families to apply for subsistence stores to the regional Military Governor, Brigadier General Rufus Saxton, who was “of the opinion that a habit of dependence upon the Government for food and clothing ought to be discouraged among the freedmen, even at the risk of some suffering.”[[93]](#footnote-93)

The simmering rage in this unit finally came to a head when on November 19, a young black non-commissioned officer named William Walker allegedly encouraged his men to remove their uniforms and stack their arms. When ordered to return to duty, they refused to resume their service until their pay was raised. Walker, who had been exempt from conscription because of his skill as a river pilot, had enthusiastically enlisted in April of 1863 for three years, but apparently chafed under the unequal pay and the brutality with which black troops were disciplined.[[94]](#footnote-94) He was arrested and subjected to a court martial, which found him guilty of mutiny and other offenses and sentenced him to death, despite his plea in a written statement that he was merely part of “an assemblage who only contemplated a peaceful demand for the rights and benefits that had been guaranteed them.”[[95]](#footnote-95) Walker was executed by firing squad in February.[[96]](#footnote-96) At least three other black soldiers were court martialed and executed for similar behavior, and more than twelve members of the 14th Rhode Island Heavy Artillery were jailed for protesting pay inequities.[[97]](#footnote-97) Congress, however, continued to drag its feet.

It was in this charged atmosphere that the Fort Pillow massacre took place. As noted in the introduction, the events in Tennessee garnered significant attention across a wide swath of Union officials and in the public mind. The moment was critical not just because of changing attitudes towards blacks but because military discipline had grown increasingly stringent as Lincoln and his military leaders recognized the need to maintain troops and prevent rebellion and desertion from within the ranks. While the reports were not comprehensive, the government maintained a list of soldiers executed for military infractions. 1861 saw seven executions and 1862 fourteen, but sixty-seven men were put to death in 1863, ninety five in 1864, and seventy nine in 1865.[[98]](#footnote-98) Many of these death sentences, presumably, were imposed for desertion, but despite the risks incurred in facing military justice, dissatisfaction with pay spread explosively throughout black ranks.[[99]](#footnote-99)

Finally, on June 20, Congress partially resolved the issue. A new law raised all soldiers’ pay, equalized the pay rates for black and white privates, and authorized the payment of black noncommissioned officers at the same rate as white NCOs.[[100]](#footnote-100) This legislation, however, did not address black soldiers’ claims that they were entitled to back pay for the time they had served under unequal rates.

The struggle over pay and equality in treatment in the military had consequences for black identity. At the beginning of the war, while free blacks residing in the North were invested in abolition, they had additional and distinct interests separating them from slaves and fugitive slaves in or recently arrived from the South. As noted, almost all of the blacks who achieved the status of non-commissioned officer hailed from the North, and northern blacks were more likely to be literate. The freedmen, however, while less educated, frequently illiterate, and far more lacking in knowledge about the norms and expectations of military discipline and service, had experience in mobilizing solidarity and resistance. Northern blacks with a few generations of freedom in their family histories, accustomed to treading carefully, largely lacked this knowledge and orientation toward authority. These differing orientations and strengths led to diversified strategies to challenge inequities, with northern blacks undertaking coordinated letter-writing, public speaking, and persuasion campaigns, while the recent contrabands threatened or executed what were, in effect, work stoppages or slowdowns. Ultimately, the two-sided strategy secured more equality, fuller recognition, and support that probably cannot be attributed entirely to congressional acknowledgement of the urgent need for black manpower.

The Alchemy of Citizenship

Northern blacks, new freedmen and freedwomen, and slaves held the unified desire to see an end to slavery and the elevation of blacks to citizenship on the same terms as whites. The struggle relating specifically to soldiers relied upon trying to leverage blacks into a conception of soldiering going back to the nation’s foundations, in which the free, independent, and voluntaristic militiaman stood against mercenary forces who fought for pay or individuals who were forced to serve. As Mary Frances Berry has noted, “Part of the intellectual baggage that [the colonists] brought to America with them included the European view that militia service was a responsibility as well as a badge of citizenship.”[[101]](#footnote-101) Blacks and their advocates recognized this, as did whites, which contributed to the initial struggle over allowing blacks to enlist and the bumpy and reluctant path that the Union followed toward embracing black soldiers as fully competent combatants. As described above, ultimately the old militia system into which blacks struggled to insert themselves proved unworkable for the Civil War’s mass mobilization. As the new system of a national combined draft and voluntary enlistment implemented through the states went into effect, blacks relied on a complex chain of connections to build the argument for citizenship through service. This argument required the recognition of blacks as soldiers entitled to equal treatment who thus had earned the recognition and membership afforded to militia volunteers.

Challenging and overcoming inequality was thus critical for soldiers and for those advancing their cause, because a system that embedded inequality could prove fertile ground for the establishment of a new inferior status for black soldiers that did not entail full citizenship. Arguments thus pushed on both ends: soldiers were entitled to full civic rights because of their sacrifice for the state, but unequal treatment of soldiers was itself an outrageous injustice. Advocates addressed both ends of the balance simultaneously. In 1864, the National Convention of Colored Men assembled in Syracuse under the leadership of Frederick Douglass. Douglass embodied both the identity of a fugitive slave, with a consciousness shaped through rebellion against slavery, and the identity of an educated, traveled, northern free black with a storied reputation for persuasive speech and writing. The Convention adopted a Bill of Wrongs and Rights and issued an Address to the American People and featured representatives from Maine, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Virginia, North Carolina, Florida, Louisiana, Ohio, Michigan, Illinois, Mississippi, Tennessee, Missouri, and the District of Columbia.

The first two resolutions adopted by the Convention, even before demands for full citizenship and complete repudiation of slavery, addressed the situation of black troops. The first resolution built on the Fort Pillow outrage: the delegates resolved to send a petition to Congress asking that body “to use every honorable endeavor that they may, to have the rights of the country’s colored patriots now in the field respected, without regard to their complexion.” The resolution continued pointedly, asking that “our Government cease to set an example to rebels, in arms against it, by making invidious distinctions, based upon color, as to pay, labor, and promotion,” clearly drawing the connection between the Confederacy’s atrocities in the field of battle and the Union’s failure to heed the demands for equalizing the conditions of black and white soldiers.[[102]](#footnote-102)

The second and third resolutions linked black military service with the black race’s embrace of American values and assumption of the duties of full citizenship (in the expectation that the associated respect afforded to citizens would be extended). The second resolution situated black soldiers as traditional patriot-volunteers ready generously to ignore past wrongs in anticipation of future restitution. Their eager rallying to the flag “without pay, without bounty, without prospect of promotion, without the protection of the Government” functioned to validate their manhood.[[103]](#footnote-103) The third, building on this ground, pressed for the nation to “grant us our full measure of citizenship, under the broad shield of the Constitution.”[[104]](#footnote-104)

While the convention recognized a distinction between its own members and “the freedmen of the South,” advocating on behalf of their improvement, it presented the interests of the race and the wrongs committed against it as unified. The Declaration of Wrongs and Rights, adopted on October 4, called out injustices linked both to slavery and to the structural inequalities suffered by northern blacks but framed these wrongs as inflicted on the race. The declaration opened with a general claim that blacks had both been deprived of natural rights and “debarred the privileges and advantages freely accorded to other men.”[[105]](#footnote-105) It highlighted the particular wrongs inflicted upon northern blacks: denial of education, removal of voting rights, and the initial refusal to arm black soldiers.[[106]](#footnote-106) The litany of wrongs then moved to the south, calling out the denial of “the ownership of our bodies, our wives, homes, children, and the products of our own labor” and the “infernal spectacle of our sons groaning under the lash, our daughters ravished, our wives violated, and our firesides desolated.”[[107]](#footnote-107) The two narratives of wrong then unified around the black soldier, who “gladly” went to fight for the union despite unequal pay, lack of respect, the denial of glory in victory and the threat of ignominious murder in defeat.

Ultimately, black veterans earned their due, at least to some extent. Congress acted not only to equalize pay rates but to provide some back pay to individuals who had enlisted under the racially differentiated rates established in 1862. And in an era when discrimination was rife and growing, and when states were increasingly free to establish and implement policies that differentiated sharply on the basis of race, the management of soldiers’ pensions seems to have remained fairly and quietly egalitarian under the radar screen.[[108]](#footnote-108)

The main problem black soldiers encountered was difficulty in proving formal family relationships, but some accommodations were developed to address the challenges accompanying the transition for slavery for many black veterans. For instance, when Congress passed legislation in 1866 authorizing the payment of survivors’ benefits to relatives of deceased black soldiers, the law specifically waived the requirement that they prove legal marriages. “For pay purposes, the wives and children of such persons were those persons to whom they had shown some obligation.”[[109]](#footnote-109) Their performance as soldiers earned them the recognition as veterans that released the purse strings, but connecting veteran status to a more comprehensive set of citizens’ rights proved elusive, in part because of its continued relation to states and state government.

The elimination of slavery proceeded in conjunction with the acceptance of black service members as described above. Blacks enlisting believed that, even though they were not receiving equal benefits, military service would help to cement their status not simply as not enslaved, but as full citizens and members of the republic. They hoped to carve out a new status – not slavery, but also not the intermediate status held by free blacks in both free and slave states prior to the war.

The literature on citizenship has interrogated thoughtfully the non-national character of citizenship and its primary determination through state law prior to the new national order ushered in by the war and cemented by the fourteenth amendment. But citizenship was also conditioned by status and status differentiations, which were also almost exclusively determined through state law. What did citizenship mean for blacks in the free state of Indiana, for instance? They were forbidden to vote, to testify in court, to serve in the militia, or to partake in public education. The 1851 constitution forbade additional blacks to enter the state with the intention to reside there, authorizing fines and criminal prosecution for offenders. Even a few years into the Civil War, Indiana courts had to grapple with attempts to enforce these penalties.[[110]](#footnote-110) Even as acknowledged and needed participants in the struggle to save the union, blacks would have to press hard to achieve the right to have rights even at the most basic level. The struggle, however, could take into account other shifts that were happening regarding citizenship and rights relating to military service.

The example of voting

National conscription and national military enlistment upended settled understandings about citizenship and what it meant, not only because blacks were pushing to mine the meaning of military service. The upheaval of war and introduction of mass service to the nation promoted change in thinking about the scope and nature of citizenship that trickled down to the state level, producing statutory change and litigation. A major exemplar of this dynamic involved the franchise. In the years between around 1862 and the late 1870s, the struggle over voting played out in partisan terms that incorporated tensions over both federalism and race, and this struggle ultimately situated voting as a freestanding right with its own developmental trajectory. In the aftermath of the Civil War, two major developments occurred. First, in statutory and constitutional terms, and briefly on the ground, voting became a federally defined and enforced right.[[111]](#footnote-111) But by the end of the century, the introduction of the Australian ballot through state legislation that managed all aspects of voting shifted authority to the states, which implemented this authority on the local level.[[112]](#footnote-112)

The work of broader civic incorporation as an exchange for service sparked a movement in some states to provide access to the ballot for soldiers, who had traditionally been disenfranchised upon their mobilization. At the beginning of the war, only one state allowed deployed soldiers to vote from outside their legislative districts, but by the election of 1864, nineteen northern states had passed laws extending the franchise to soldiers.[[113]](#footnote-113)

Legislatures in some states (including Pennsylvania, Kentucky, Ohio, Iowa, and Michigan) passed laws extending the vote to soldiers despite having constitutional provisions that tied voting to geographic residence. These statutes faced state constitutional challenges, producing debates over what was due to soldiers in exchange for their service. In *Chase v. Miller*, the Pennsylvania Supreme Court found that the attempt to enfranchise soldiers improperly elevated military over civil authority, explaining that “To the civil and not to the military power did the constitution intrust the formation of election districts, and therefore the civil cannot commit it to the military.”[[114]](#footnote-114) Furthermore, the court reasoned, the risk of fraud rendered it potentially undermining to the very democracy the soldiers were fighting to save, despite its praise for their “signal sacrifice . . . for the public good” that they were making “most cheerfully and from the highest motive.”[[115]](#footnote-115) Ohio, however, weighed the question differently, seeing the law as merely a matter of preventing the disenfranchisement of those “who are, compulsorily, or patriotically, absent from home on the day of election, periling their lives in defense of the life and integrity of the nation, and who constitute perhaps more than one fourth of the electoral body of the state.”[[116]](#footnote-116) Iowa took the same path in 1863, upholding its statute against constitutional challenge as “eminently just and sustainable.”[[117]](#footnote-117)

Michigan’s high court provided the most comprehensive analysis of the question in 1865, acknowledging the importance of respecting and enforcing constitutional provisions as fundamental democratic safeguards for the public welfare but asserting that “in construing a constitution we must . . . take into the account the existing state of things, which is so different from anything which has gone before.”[[118]](#footnote-118) The court also acknowledged that most of the state courts that had heard such challenges had found ways to rule the laws to be constitutional. Nonetheless, the justices reluctantly concluded that the proper remedy was a constitutional amendment, despite the harm and injustice inherent in “depriv[ing] of the privilege of voting a class of men to whom we are largely indebted for having the right preserved to ourselves.”[[119]](#footnote-119) The ruling provoked a dissent from the court’s Chief Justice, who argued in part “There is nothing in reason, or in the nature of our political institutions which should or does prevent the soldier, who leaves family, home and friends, and risks life and limb for the preservation of the integrity of the government, from voting, or which should or can disfranchise him.”[[120]](#footnote-120) While the soldiers did not win the court case, the argument that core political rights like suffrage should not be denied to those who had served was clearly making headway.

The right of voting was shifting during and after the war in other ways as well, which laid the groundwork both for its own reconfiguration and the reconfiguration of citizenship in ways that would circumscribe black rights. During and immediately after the war, for instance, some states conditioned the exercise of the franchise on a willingness to swear loyalty to the union, leaving the courts to weigh the importance of voting as a right against the worthiness of those who would exercise it. In 1863, a Kentucky voter was turned away at the polls because, while he allowed that the government should be entitled to “men and money” to put down the rebellion, he stated that he would not relinquish “his negroes”; in this case, the court found that because he had sworn the minimal loyalty oath and had nonetheless been denied, he was entitled to pursue his suit against the denying official for damages.[[121]](#footnote-121)

The Maryland Court of Appeals undertook a fuller analysis directly on the constitutional question of denying the franchise to former rebels in *Anderson v. Miller* in 1865. In the majority’s analysis, although the people’s right to participate in governance by voting provided the foundational security for liberty and free government, the right itself was conventional rather than natural and thus subject to limitation. They framed it as “subordinate to the higher power of regulating the qualifications of the electors and the elected.” The aggregate political power of the people could be distributed to enfranchise “such persons as they deem proper, for the safety of the Commonwealth,” a power of limitation that encompassed both the collective right to exclude rebels and to limit suffrage to free white male citizens. Thus for the court, “Citizenship and suffrage are by no means inseparable; the latter is not one of the universal inalienable rights with which men are endowed by their Creator.”[[122]](#footnote-122) Because suffrage was a means of preserving the state itself as well, it could be restricted to protect the integrity of the state.

Generally, loyalty oath cases provided courts with the opportunity to reconsider and theorize the nature of rights and the extent to which they were an artifice of the state. This question was important for determining both what limits could be placed upon disloyal citizens and for understanding what emancipation would mean both for freed slaves and free blacks throughout the nation. If disloyalty enabled the stripping of at least some rights from citizens without running afoul of the ex post facto clauses of the federal and state constitutions, and service entitled other individuals to at least some enhanced package of rights that they had not held before, what were the limits to these contractions and expansions? How did these shifts transform thinking about citizenship and the various status categories that could exist under its umbrella?

The simultaneous need to reconfigure rights and protect the states’ authority to define and implement them led Missouri’s high court, for instance, to presume that natural rights had no independent operation outside the sphere of their encoding within a system of civil jurisprudence. The court explained this in a case allowing the state to refuse licenses to ministers and lawyers who would not comply with a loyalty oath requirement. While natural rights “are doubtless highly important, and, for anything that we may judicially know, ought to be *inalienable*,” once a government had been established, these natural rights were “raised into civil rights by the established government and laws, and civil rights are such only as they are so created, defined, secured, and made to be, and nothing other.”[[123]](#footnote-123) While the old state constitution had instantiated the right to practice law and solemnize marriage, the recreation of the constitution enabled the reconfiguration of such rights, absent any punitive intent. The court identified the intent behind restricting such rights as “a measure of political wisdom only, looking to the good government of the State,” and therefore not subject to federal constitutional challenge.[[124]](#footnote-124) And because the change took place not through regular legislative action, but rather through constitutional transformation, it fell under the scope of a legitimate exercise of sovereign power.[[125]](#footnote-125)

The idea of state constitutional re-creation as a new investiture of civil rights was important, and it is worth noting how states exercised this power in the brief period before the national constitutional effort to extend suffrage to black voters. Tennessee, for instance, specifically denied suffrage to people who had aided the Confederacy, but guaranteed ballots to “white citizens of twenty-one years of age and upwards” who had remained loyal, had never engaged in rebellion, had served the Union and been honorably discharged, among others. Even individuals who had fought for the Confederacy could be extended voting privileges if they had been conscripted by force but remained loyal.[[126]](#footnote-126) When Tennessee’s process for divesting the disloyal of the ballot was challenged, the court found that the procedure was improper because it denied voters due process. Nevertheless, the court emphasized that it did not in any way “question[] or doubt[] the sovereign power of the people of the State, expressed through a Constitutional Convention or other organic mode, to prescribe the qualifications of voters and the limitation of the elective franchise, whereby the franchise may be bestowed upon persons not before entitled to it, or may be taken from persons before entitled to it; subject, however, to such restraints upon this power as exist in the Constitution of the United States.”[[127]](#footnote-127)

The federal government stepped into the traditionally local field of voting in legislative, constitutional, and practical terms. Legislation in 1865 banned federal troop presence at the polls “unless necessary to keep the peace,” which enabled the protection of new voters.[[128]](#footnote-128) The Military Reconstruction Act of 1867 required former Confederate states to adopt universal male suffrage in their state constitutions, and Congress mandated a national election day for federal elections in 1872.[[129]](#footnote-129) The passage of the Fifteenth Amendment at least in textual terms “was a major change in the American constitutional order,” because it placed Congress in a position of directly monitoring how states managed the vote. No longer could states possess complete power to create voters for federal elections by revising the eligibility standards for voting for the popular branch of the state legislature.[[130]](#footnote-130) Although the federal government now held this power, however, it failed to use it effectively, and southern states employed increasingly savage methods of voter suppression to blacks and poor whites. Ultimately, these states repossessed the power to control who could and could not vote, even if the authority to decide questions about who would be allowed to vote remained nominally in the hands of the federal government.

During and immediately after the war, black soldiers had good reason to believe that voting rights could be gained through the leveraging of military service. Several states moved to extend the franchise specifically on the basis of service, some working around constitutional restrictions to do so. Advocates for black advancement could have observed these discussions and reasonably concluded that the time was ripe for linking black men’s service to a right to the ballot as an integrated facet of the new status to which they were entitled after emancipation. The increased oversight of the federal government and the constitutionalization of the right elevated it in symbolic terms, and made it a stronger priority for enforcement in practical terms for a short while.

This elevation, however, also confirmed that voting was not inherently connected to citizenship, underlining its continuity with earlier understandings of its meaning. The courts that had debated its expansion had noted its conditioning on status rather than citizenship, and even the major changes envisioned and not fully realized by Congress could not detach it from its linkages to status. Thus, although black men could perform the manly role of soldiering and through this performance, convince white lawmakers of their worthiness of some civic rewards, they could not succeed in securing grounded rights that the states would respect and enforce, despite direct federal recognition and enforcement power.

Basic contract rights, familial authority, and the attempt to transform status

The Thirteenth Amendment settled the question of slavery definitively and nationally, short-circuiting ongoing struggles over the breadth of emancipation and providing a final end date to the institution of slavery and the status associated with it. In addition to wrapping up the loose ends that the termination of slavery as a status left, as discussed above, state courts and lawmakers were left with the conundrum of what emancipation would mean in civic terms, especially for blacks who had gained liberty through service. During the chaos of war, a small-scale experiment in radical land reform was undertaken in Georgia’s Sea Islands, with plantations abandoned by panicked white owners having been sold at low cost to liberated slaves, but in the summer of 1865, Andrew Johnson terminated the program, directing Brigadier General Rufus Saxton to manage the process of returning the land to any white owners who could be located.[[131]](#footnote-131)

Immediately after the end of the war, debate intensified on the national level over to manage the transition to freedom. The debate reflected some of the rhetorical and cultural work that blacks and their white advocates had done to prepare the ground for civic equality for black men based on their service to the union. However, in an address delivered to Congress at the end of 1865, Andrew Johnson proposed a vision relating the freedmen’s rights to their growing capacity for civic membership, advocating for allowing the states to make these determinations and excepting suffrage specifically from immediate implementation:

In my judgment, the freedmen, if they show patience and manly virtues, will sooner obtain a participation in the elective franchise through the States than through the general government, even if it had power to intervene. When the tumult of emotions that have been raised by the suddenness of the social change shall have subsided, it may prove that they will receive the kindest usage from some of those on whom they have heretofore most closely depended.[[132]](#footnote-132)

Within this vision, Johnson privileged particular rights as the most important to fit the freedmen for the training and protections necessary to guarantee the good exercise of civic membership, creating in effect a modified civic status equivalent to tutelage. The performance of military service alone was insufficient to equip black men to exercise the tools of democratic self governance, and state officials would be the best judges of when they were ready to take on this responsibility.

Johnson implied that, for other rights, the federal government would have a role to play. “It is equally clear that good faith requires the security of the freedmen in their liberty and their property, their right to labor, and their right to claim the just return of their labor. I cannot too strongly urge a dispassionate treatment of this subject, which should be carefully kept aloof from all party strife.”[[133]](#footnote-133) He remained agnostic about the possibility for whites and blacks to live together “in a state of mutual benefit and good will,” but advocated for whites and the federal government in particular to “encourage them to honorable and useful industry, where it may be beneficial to themselves and to the country; and, instead of hasty anticipations of the certainty of failure, let there be nothing wanting to the fair trial of the experiment.”[[134]](#footnote-134) His stance articulated a middle ground for the transitional process, but envisioned an endpoint at which the freedmen would have equal rights, if not any guarantee that these rights would render them equal competitors. He also declined to articulate any temporal endpoint for this proving period, after which blacks’ performance of “manly virtues” would earn them a fuller package of rights.

Johnson saw the fundamental difference between the freedman and the slave explicitly as a “substitution of labor by contract for the status of slavery.”[[135]](#footnote-135) But freedmen could not gain the responsibility for agreeing to honest labor as long as doubts remained about their capacity to choose their work and be certain to recover fair wages for their work. This, for Johnson, had clear legal implications: “And if the one ought to be able to enforce the contract, so ought the other. The public interest will be best promoted if the several States will provide adequate protection and remedies for the freedmen.”[[136]](#footnote-136) Johnson’s framing of this question left intact the idea that civic rights were connected to a citizenship given substance through rights articulated and enforced through state law. While the rule of *Dred Scott* denying black citizenship was clearly dead, its denial of any substantive independent national citizenship remained ingrained in many policymakers’ thinking. But what would the southern states do when entrusted with the responsibility to guarantee freedmen’s capacity to make and enforce contracts?

Early indications were highly discouraging. Southern Democrats responded to the open question of status raised by the Thirteenth Amendment by passing the Black Codes that attempted to re-impose many of the practices of slavery under new legal guises. Congressional Republicans responded with two pieces of major legislation: the Civil Rights Act of 1866, which gutted the Codes, and the Reconstruction Act of 1867, which dislodged the entrenched political structure of the white Democratic Party in the south by enfranchising black Republicans and enabling the election of Republicans to statewide offices throughout the former confederacy. These legislative solutions, however, were inadequate because, as Pamela Brandwein notes, “Democrats still retained control of local law enforcement.”[[137]](#footnote-137) If violence could be used to intimidate and terrorize blacks attempting to exercise or enforce any of the rights expressed in the Civil Rights Act, neither the legal protections it contained nor the political backstops expressed in Reconstruction legislation could be effective. The violence was coordinated and focused, targeting in particular the blacks, white Republicans, and Freedmen’s Bureau agents who sought to make change on the ground and in the political sphere. It was reinforced and supported through the failure of law enforcement, judges, and juries to stem it, a phenomenon readily identifiable as a form of state neglect by congressional Republicans. [[138]](#footnote-138)

Within this discouraging environment, individual blacks sought to exercise their newly won status and they and their advocates turned to the courts to enforce their recognition as rights bearers. As with suffrage, the idea was that gaining the right would secure a more elevated status, and black claims to more equal status would persuade courts to enforce the right. Key for this dynamic were contract rights. The right to make enforceable contracts depended upon status. Individuals possessing comparatively subordinated status in formal terms had great difficulty in forming legally meaningful contracts, and if contracts were formed, their enforceability was questionable at best. Children could not make enforceable contracts with parents, servants could not make enforceable contracts with masters, and one of the badges of slavery was slaves’ inability to make binding contracts with their masters or with anyone else, for that matter. These legal debilities all derived from the structurally subordinated status of the putative contract maker, implying legal incapacity for the subordinated individual to negotiate and achieve the meeting of minds that was the hallmark of a valid contract.

The Civil Rights Act was more than just a granting of rights – it was an extension of the Thirteenth Amendment’s abolition of slavery by reinforcing blacks’ fundamental capacity to make contracts through the elimination of the status-based formal barrier. But the other major class of individuals who had problematic or incomplete access to contract due to their status was women, and the arguments for extending rights to black men on the basis of military service reinscribed black women’s subordinated status in gendered terms, even as feminists mobilized to challenge coverture and demand transformations in the marriage contract.[[139]](#footnote-139)

The contract rights gained were rights that recognized black men as at least partial citizens and reinforced their autonomous standing as men. In exchange for their invaluable service as warriors, they gained the right to act as heads of household, negotiating in meaningful and enforceable ways to perform the masculine tasks of laboring for wages and owning personal and real property to support the household. While these rights could extend to women, black women along with white women faced significant ambiguities relating to their status as women, particularly if married – and remember that newly emancipated black women were very strongly encouraged to marry, especially if they had children.[[140]](#footnote-140) Contract rights connected with labor rights, and reinforced the masculine civic status that northern free blacks partially possessed in formal terms and coveted in substance during the early years after the war.

Guaranteeing contract rights was difficult and controversial, and those who wished to reinscribe slavery recognized that fully enforceable contract rights would undermine efforts to carve out a subordinated status that could encompass all blacks, whether recently emancipated or not. But contract rights could also serve as a midrange compromise, staving off more radical reform that would address northern limits on blacks’ rights to have rights and empower freedmen through land reform to begin functioning immediately as yeoman farmers.

The contract labor system that developed in the cotton-based agricultural systems in the south ultimately turned to freedmen’s disadvantage. The freedmen had fought for and won contract rights, configured as individualistic, particular, and subject to private enforcement against the contractor through legal action. As John Rodrigue describes the situation, the variations on contract-based sharecropping “eventually undermined the very solidarity that had strengthened the former slaves’ bargaining position in the first place. As individual black families or households spread out over the cotton plantations, it became increasingly difficult for them to mobilize for self-defense or to act collectively in other ways.”[[141]](#footnote-141) Without the capacity to organize, and with individual and personally enforceable rights as their only defense, freedmen became increasingly enmeshed in a contractually based system of subordinated labor. By having to bargain for provisions for themselves and their families, seed, and the implements of their labor, sharecroppers were vulnerable in bad years (or under increasingly adverse or coercive bargaining circumstances) to winding up with very little or no net income or in debt after the crops were sold.

But as Rodrigue notes, this outcome was not necessarily inevitable, though he and other historians do attribute it to labor patterns. In Louisiana’s sugar economy, freedmen did not rely primarily upon the individual contract rights pressed elite northern whites and black leaders toward the end of the war. Rather, they “defined economic autonomy collectively rather than in the individualistic manner that characterized freemen’s aspirations in the cotton south.”[[142]](#footnote-142) Black political mobilization at the end of the war and early in the post-bellum years included a push for land confiscation and redistribution, but once these ideas had collapsed as viable options in the face of national rejection, Louisiana blacks developed a group-based wage labor system that exploited labor’s advantages in an agricultural production environment that required large groups of highly skilled labor. According to Rodrigue, labor power and political power went hand in hand for Louisiana blacks who built political networks and networked labor groups simultaneously.[[143]](#footnote-143) Ultimately, Louisiana became the site of some of the longest lasting pockets of organized black Republican electoral strength, but these efforts to acquire and maintain political power came increasingly with white terrorism and violence.[[144]](#footnote-144)

Congress’ aim in guaranteeing contract rights for the emancipated slaves is disputed, but could be seen as an effort to prevent southern state legislatures from reconstructing the status of slavery through specific limiting legislation. Contract rights would protect the capacity to bargain for labor and the wages to be paid to laborers. They would also serve to protect freed persons in a myriad of potential commercial interactions with whites (and secondarily with each other). Thus, they could situate emancipated individuals as fuller citizens, as equal in formal terms to others who could exercise contractual power as an inherent part of their civic membership. Contract rights were key markers of agency and civic membership. They implied that the contractors were equal in power in abstract terms, that they had the capacity to make binding agreements, and that they had automatic access to the legal system to arbitrate disputes and to enforce performance or damages if one of the contracting parties did not acknowledge the validity of a properly formed contract. The key factor was not so much the capacity to contract itself, but the ability to rely on state law as a guarantor of enforcement.

In addition to guarding against the reimposition of slave status, though, contract rights’ connections to autonomous individualism and citizenship rendered their possessors citizens in gendered ways. The contracts that the passage of the 1866 Civil Rights Act encouraged blacks to form were contracts for wage labor, for land leasing or perhaps ownership, and for the purchase and control of other real and personal property. Another type of contract – the marriage contract – was more controversial and differently configured, as in some cases it was practically coerced (particularly between freedmen and freedwomen) and in others it had long been legally forbidden (between blacks and whites).[[145]](#footnote-145) The tension over the nature of contractual rights regarding marriage had gendered dimensions that reinforced male rights.

As Peggy Pascoe notes, the fourteenth amendment’s passage, along with the Civil Rights Act, generated the possibility that southern states that had not reconstituted bans on interracial intimate relationships had to recognize such relationships as marriages. In some states, courts found common-law marriages to the advantages of the partners and children of deceased white men.[[146]](#footnote-146)As Pascoe explains, southerners in other states also displayed significant doubts about the status of policies barring interracial marriage, repealing laws in Louisiana, South Carolina, and Mississippi, and striking them down through litigation in Alabama and Texas in cases involving white men and black women. Pascoe argues that these doubts “ultimately rested on the connections between marriage, civil rights, and political equality in nineteenth-century thinking about the rights of free White men.”[[147]](#footnote-147) As southern intransigence gained momentum, courts on both the state and federal levels determined that, despite the use of the language of contract without reservation or modification, the marriage contract was not one that fell under the ordinary rules for interpreting contractual equality, thereby closing the door to any configuration of interracial marriage as a basic right for black men.[[148]](#footnote-148)

While contract was not everything that the strongest advocates for equality had hoped to achieve, freedmen and their representatives in the Freedmen’s Bureau advanced claims based on contracts to enforce their new rights. These suits were occasionally complicated by the ordinary assumptions of contract law that writing, understood by all parties, supersedes other forms of evidence, and that all contract makers have the full civic (and masculine) capacity to pursue legal enforcement independently. One example comes from Georgia’s Supreme Court, which allowed a new trial in a dispute in which freedmen had sued a plantation owner for full enforcement of a contract for sharecropping. This court used the freedmen’s relative inexperience against them, ruling that a new trial was appropriate because the trial judge had refused to admit evidence that the crop would have been larger if the freedmen had worked harder.[[149]](#footnote-149)

Occasionally, however, state courts recognized that the new freedmen needed assistance in exercising their new rights. A group of Tennessee freedmen also went to court to extract payment for work they had performed under contract. In this case, the farm in question had gone bankrupt, leaving creditors with secured loans having claims that exceeded the proceeds of the crop. The freedmen sought to intervene in the bankruptcy proceedings, arguing that their labor gave them a superior interest in the crop than that of the mortgagees.[[150]](#footnote-150) The parties in the case objected on the ground that the plea to intervene was brought not by the thirty-five or forty laborers aggrieved, but rather by a “next friend” – an agent of the Freedmen’s Bureau – which they argued was inappropriate for full rights holders.

The court reasoned, “we know that the complainants . . . belong to a race which have but recently been emancipated from slavery; that as a race they are far below the white man in intelligence, but we also know that by law they are under no disability to sue, and have all the rights, before the courts of the country, possessed by any other class of citizens. Yet their want of intelligence, and their ignorance of the complicated relations of business life, appeal with great potency.”[[151]](#footnote-151) The court thus situated the freedmen as complex legal subjects – entitled to the rights of civic membership but without the full capacity to exercise them on their own behalf. The case proceeded, but the court concluded that, unless the freedmen were able to establish that they had a lien on the crop (rather than simply a contract to benefit from the sale proceeds), they could not obtain relief.

These questions aside, however, state courts sometimes acknowledged the full rights of freedmen to enforce contracts through legal action. In 1872, the Texas high court heard an appeal from a landowner who claimed that the lower court had inappropriately allowed individual freedmen to sue for breach of contract for their shares of half of his crop based upon their rental contract with him. The court held that, while the contract was made jointly, the obligations flowed directly between each individual renter and the landowner.[[152]](#footnote-152) This rendered the landowner vulnerable to multiple suits for damages.

Results were mixed. Georgia’s high court turned back an attempt by a landlord to escape his contractual duty to pay the freedman who had worked his land by claiming that they were partners rather than contracting parties. In ruling for the freedman seeking compensation in the terms of the contract, the court declared, “It is the duty of the Courts to see that this class of contracts are performed, in good faith, on the part of the landlord to the laborer who makes the crop on his land, when the laborer performs his part of the contract.”[[153]](#footnote-153) Two years later, another landowner appealed an adverse finding on similar grounds, along with a claim that the sharecropping freedman had not worked adequately to produce a prosperous yield, and the high court again ruled for the freedman, citing *Holloway*.[[154]](#footnote-154)

Freedmen could not, however, engage in self help that violated contract terms and general principles of contract law. In *Allen, Preer & Igles v. Smith*, landowner Smith sued the company that ended up in possession of his ginned cotton for its return. The freedman who was sharecropping on his land had harvested and ginned the cotton, but when Smith did not take it for immediate sale (perhaps because it was allegedly worth less than the amount he had advanced to the laborer), the unnamed freedman loaded the bales, transported them to Columbus, and sold them himself. The high court agreed with the trial court that the cotton still belonged to Smith, as the freedman had taken it illegally.[[155]](#footnote-155) The record does not reveal whether the freedman in question faced any legal consequences, but the reported facts indicate that the landowner refused to contract with him further.

Courts also wrestled with the emerging black family structures in light of southern states’ efforts to secure a docile labor force and control potentially dangerous adolescent blacks. Several states passed laws mandating the binding out as apprentices of young black men and women who did not have obvious sources of familial support, and whites took aggressive advantage of these opportunities. The black parents of youths bound out under these provisions sometimes objected, and occasionally had success in overturning the orders. For instance, in 1886, a minor, Mary Cannon, was indentured against her will to one James Stuart. Her mother successfully filed for a writ of habeas corpus on her behalf because the justices of the peace who indentured the minor provided no notice to her mother, who should have been offered the opportunity to indemnify the county against the girl’s becoming a public charge.[[156]](#footnote-156)

Blacks in Kentucky also resorted to the courts to resist Kentucky’s 1866 law authorizing indentures of minors. In *Thomas v. Newcomb*, a county court approved the forcible apprenticing of a young black man to a white who had been his former owner under color of a statute allowing county courts to apprentice out “orphans and other poor children,” giving preference to the children’s former owners if the child in question was black or mulatto.[[157]](#footnote-157) While the child in question was indeed an orphan, his grandfather held custody, and a Kentucky appellate court found that “as it clearly appears no ground of necessity existed for binding out the boy, the court had no authority to do so.”[[158]](#footnote-158) Thirteen year old Washington Small, bound out to James Small until the age of twenty one, likewise was able to have the order reversed, because he, too, had a grandfather “shown to be of good moral character,” who could raise the boy to manhood.[[159]](#footnote-159)

Not all litigation over apprenticeship afforded agency to the children in question or their families. For example, in the North Carolina case of *Ferrell v. Boykin*, the dispute was over which county court had the legal authority to bind out an illegitimate child born as a slave whose mother had died, and the court resolving the dispute noted that the county courts had the duty “to bind out all free base-born colored children, whether they are paupers or not.”[[160]](#footnote-160) A year later, however, the North Carolina Supreme Court heard a habeas claim by two teenage sisters, who had been bound out by a county court without even being given notice of the proceeding. The Court saw this action as wanting in jurisdiction and expressed concern about the mass imposition of the binding out practice in the wake of war and destruction. In the case itself, had the sisters and their advocates been present in court, the truth would have come out: “They are industrious, well behaved and amply provided for in food and clothing. They live with their mother and step-father, who are of good character and are well to do.”[[161]](#footnote-161) Society had no interest in disrupting this familial bond, and had the sisters or their parents been present to introduce this information, “it would have been a gross outrage” if the sisters had been bound out.[[162]](#footnote-162) Georgia articulated a similar principle to overturn an order binding out a teenage boy without consulting with his mother; since the child was illegitimate, his mother was “entitled to the possession of the child. Being the only recognized parent, she may exercise all the paternal power.”[[163]](#footnote-163)

Texas, too, grappled with the problem of managing aggressive apprenticing that threatened families, but explored the problem in a lengthy opinion that presented a sanitized narrative of an antebellum world of hardworking poor whites and a system of slavery populated largely by small slaveholders whose child-like and loyal slaves were more like family members. Emancipation required a fundamental reconfiguration of the order to accommodate and govern “four millions of illiterate people . . . a people without property, money, or book-learning,” but the court acknowledged that some part of the legislative agenda consisted of “inventions, as to how the labor should be controlled for the benefit of the old masters.”[[164]](#footnote-164) In this case, thirteen or fourteen year old Elkin Pope was apprenticed to Mary Timmins by consent of his father, Harry Pope, over the objections of his married mother, Sarah Lacy, who denied that Harry Pope had the paternal authority to assign Elkin’s labor. The trial court found that Harry Pope could exercise this authority because he had been married to Sarah Lacy “after the usual fashion of negro marriages” when Elkin had been born, despite Harry’s having abandoned Sarah around ten years before the dispute.[[165]](#footnote-165) Elkin, however, had been living with his mother when slaves gained emancipation and remained with her until he was forcibly removed, returning to her at the first opportunity. The court extended the usual principle of denying paternal authority to the fathers of bastards to reject Harry Pope’s attempt to direct his son’s life course.[[166]](#footnote-166) Even if a marriage were legally constructed after the fact, reasoned the court, “it would be . . .unreasonable . . . to suppose that this child could be taken from its mother against her consent, and apprenticed solely at his will and pleasure. It was evidently . . . the object and purpose of the law to give this authority to the parents or guardians of minor children subject to their control, and for whose care and nurture they were providing.”[[167]](#footnote-167) The father had forfeited his parental authority through his “years of desertion and abandonment, during which he has left his wife to struggle unaided for their support,” and allowing the exercise of this authority would “add to the injury already done her the severest blow which can be inflicted upon a woman, whatever may be her condition or sphere in life.”[[168]](#footnote-168) Despite the court’s high rhetoric, it should be noted that Sarah Lacy intended to use her maternal authority to apprentice the boy out to a different master.

These cases taken on the whole underlined the importance of performativity in the acquisition of civic rights. Black parents, even unmarried or separated mothers, could exercise parental authority over their children and the courts would at times respect kin relationships extending to grandparents. However, to extract this recognition, the caretakers had to illustrate their capability of supporting the children in question and maintaining a stable household in economic and moral terms. Children whose families could not present this picture of conventional domestic relations were at the mercy of the county courts and white masters eager to avail themselves of these teenagers’ discounted labor until they achieved the age of majority and independence.

Conclusion

In the 1860s and early 1870s, black men and women were actively claiming rights in the state courts. The rights they claimed were contract rights and rights of paternal authority, generally concerning their capacity to claim compensation for their labor and to raise children if they could prove they had the economic capacity to do so. While the dream of land reform had failed, men exercised their contractual rights to generate the circumstances in which they could establish households, and parents and kin at times could use their parental status to protect children from coercive labor practices. As agricultural laborers, they lived in homes over which they exercised possessory interests and control, and largely fully adopted the heterosexual and patriarchal norms of single family households. Black women often worked in the fields as well, and some joined or filed independent lawsuits claiming their contract rights. Nonetheless, if they were married, their earnings and contract rights were subject to the standard limitations on married women.

The rights claims that were both central to the post-emancipation period and worked effectively drew from acknowledgements of African Americans’ crucial assistance in wartime. They were rooted in conceptions of masculinity, a quality that black soldiers simultaneously exhibited and earned by virtue of their service. Black activists delineated these rights and laid out a program for achieving them, and national authorities acceded, albeit in less expansive terms. Nonetheless, these rights were self-limiting in their connection to masculine conceptions of individuality and personal responsibility for enforcement. Likewise, because the rights were inherently masculine, their effective practice and extension depended upon black men’s capacity to continue to use them, a capacity that the increasingly violent insurgency in the postbellum south sought to contain. The masculine nature of these rights also left black women dependent upon men’s rights advances to render them, rather than the state, the primary protectors of, supporters of, and advocates for women’s advancement, particularly married women.

At the end of the war, the victorious Union engineered a massive troop review, with more than 250,000 soldiers marching down Pennsylvania Avenue on May 23-24, 1865. Congress then authorized mass demobilization, and within a year, the Army had shrunk to fewer than 40,000 officers and troops.[[169]](#footnote-169) Despite the uncertain hold established on citizenship, blacks had at least won the right to serve, and Congress acknowledged this. They were not, however, to serve in the volatile south to enforce the status changes enacted by Congress or to try to rein in white paramilitaries seeking to undermine the fragile peace. Instead, on July 28, 1866 Congress authorized the creation of six regiments of black troops, four infantry and two cavalry, to serve in the west.[[170]](#footnote-170) While their primary purpose would be to subdue resistance from the Plains Indians, they would also help to pacify the territories and curb lawless behavior on the part of aggressive white settlers. The legislation appointed chaplains not only for spiritual guidance but with specific instructions to provide basic instruction in reading, writing, and arithmetic to the troops, the bulk of whom were newly emancipated.[[171]](#footnote-171) Recruiters for the Twenty-Fifth Infantry Regiment had great success in the New Orleans-Baton Rouge area, where whites were already engaged in bloody repression of black veterans and economic opportunities were highly limited. Black veterans in New Orleans had marched en masse for civil rights in July of 1865, and local whites had responded by provoking a riot that slaughtered thirty-eight, thirty-four of whom were black.[[172]](#footnote-172)

While many black veterans who survived the war opted to return to civilian life, the introduction of these four regiments involved significant maintenance of black men in arms as a proportion of the new “peacetime” army. The demobilization left only twenty-five infantry regiments, two of which were black, and the two black cavalry regiments accompanied eight additional mounted regiments.[[173]](#footnote-173) By 1870, around 2700 black men served in these regiments, and they continued to compose around ten percent of the formally organized Army manpower through the years leading into the Spanish American War, when the Tenth Cavalry would collaborate with Teddy Roosevelt’s Rough Riders to take San Juan Hill.[[174]](#footnote-174) Among these professional soldiers, twenty-three would earn Medals of Honor between the end of the Civil War and 1898.[[175]](#footnote-175)

While the organization of these regiments provided valuable opportunities for black men to continue their military service, it also pulled out some of the most ambitious and opportunistic men from emancipated communities in the immediate aftermath of war. While these men would continue to struggle for respect and equality as members of the armed services, they would be somewhat removed from the ground-level civic struggles in both the north and the south to change black status. They remained visible inspirations to advocates for black equality, but their exploits and successes could not be used effectively to extract concessions either from the rapidly developing and intentionally organized white supremacist states in the south or the newly reified inegalitarian practices of states in the north.

The Fort Pillow massacre, with which this chapter opened, became a moment of inspiration and leverage for black troops and advocates for black equality. In response to the outrage the massacre provoked, Congress moved toward equalizing pay for black soldiers and extending benefits more liberally to their families. These developments took place at a time when citizenship itself was in flux, challenging older definitions that left citizenship and its associated rights, expectations, and benefits largely in the hands of the states. The more national nature of the Union armed forces generated broader, national discussion about what was due to the troops, and their performance of masculine sacrifice on behalf of the nation marked them as civic members both of the nation and of the states for which they fought.

The broad equality of citizenship they sought, however, did not materialize. Citizenship shifted a bit in response to the national turmoil wrought by war and Reconstruction, and changes happened regarding black status, but citizenship did not become a national unified concept that guaranteed access to a particular package of rights, despite some Republicans’ efforts to press this vision. Slavery’s abolition removed the distinction between slaves and free blacks, but ultimately even the gains obtained through sacrifice could not forge more than minimal access to procedural process and a promise to enforce a small, and shrinking, set of civic rights, including the right to contract and minimal aspects of patriarchal authority for those who could perform it successfully. Those who had actually served as soldiers gained access to pensions and survivors’ benefits in a quietly egalitarian manner, but their sacrifices for the nation did not secure broader recognition or incorporation for blacks.

1. Cimprich and Mainfort, “The Fort Pillow Massacre: A Statistical Note.” [↑](#footnote-ref-1)
2. Cimprich and Mainfort. 835. [↑](#footnote-ref-2)
3. Cimprich and Mainfort, 836. [↑](#footnote-ref-3)
4. Cimprich and Mainfort, 837. [↑](#footnote-ref-4)
5. Cimprich and Mainfort, 837. [↑](#footnote-ref-5)
6. Cimprich and Mainfort, 837. [↑](#footnote-ref-6)
7. Cimprich and Mainfort, 837. [↑](#footnote-ref-7)
8. Tap, “Amateurs at War: Abraham Lincoln and the Committee on the Conduct of the War,” 5. [↑](#footnote-ref-8)
9. Tap, 2. [↑](#footnote-ref-9)
10. Fort Pillow Massacre, 2. [↑](#footnote-ref-10)
11. Fort Pillow Massacre, 96. [↑](#footnote-ref-11)
12. Fort Pillow Massacre, 18. [↑](#footnote-ref-12)
13. Fort Pillow Massacre, 25. He characterized them as “contraband boys,” marking them as slaves who had escaped to freedom by crossing Union lines. [↑](#footnote-ref-13)
14. Fort Pillow Massacre; Fort Pillow Massacre, 72. [↑](#footnote-ref-14)
15. Fort Pillow Massacre, 92. [↑](#footnote-ref-15)
16. Fort Pillow Massacre, 13–14, 22, 26, 29, 72, 93, 122 et seq. [↑](#footnote-ref-16)
17. Fort Pillow Massacre, 1–2. [↑](#footnote-ref-17)
18. Fort Pillow Massacre, 2. [↑](#footnote-ref-18)
19. Fort Pillow Massacre; Fort Pillow Massacre, 2. [↑](#footnote-ref-19)
20. Fort Pillow Massacre, 3. [↑](#footnote-ref-20)
21. Fort Pillow Massacre, 4. [↑](#footnote-ref-21)
22. For instance, the “contraband boys,” who were clearly helping the Union troops at the fort. [↑](#footnote-ref-22)
23. Basler, “And for His Widow and His Orphan.” [↑](#footnote-ref-23)
24. Basler. [↑](#footnote-ref-24)
25. Klinkner and Smith, *The Unsteady March: The Rise and Decline of Racial Equality in America*, 43–44. [↑](#footnote-ref-25)
26. Edgerton, *Hidden Heroism: Black Soldiers in America’s Wars*, 23. [↑](#footnote-ref-26)
27. Edgerton, 18. Blacks served quietly and without controversy in the US Navy throughout much of the antebellum era. Id. [↑](#footnote-ref-27)
28. Edgerton, 25. [↑](#footnote-ref-28)
29. Klinkner and Smith, *The Unsteady March: The Rise and Decline of Racial Equality in America*, 52–53. [↑](#footnote-ref-29)
30. Butler, “Commander of the Department of Virginia to the General-in-Chief of the Army.” [↑](#footnote-ref-30)
31. Butler. [↑](#footnote-ref-31)
32. Berlin et al., “Tidewater Virginia & North Carolina,” 60. [↑](#footnote-ref-32)
33. Finkelman, “Lincoln, Emancipation, and the Limits of Constitutional Change,” 359. [↑](#footnote-ref-33)
34. Finkelman, 366. [↑](#footnote-ref-34)
35. Finkelman, 367. When Union troops entered Kentucky, Union generals returned escaped slaves to their owners. Berlin et al., “The Destruction of Slavery,” 17. [↑](#footnote-ref-35)
36. Dix, “Proclamation by the Commander at Baltimore,” 79. [↑](#footnote-ref-36)
37. Berlin et al., “Lowcountry South Carolina, Georgia, and Florida,” 107. [↑](#footnote-ref-37)
38. Finkelman, “Lincoln, Emancipation, and the Limits of Constitutional Change,” 380. [↑](#footnote-ref-38)
39. Berlin et al., “Lowcountry South Carolina, Georgia, and Florida,” 108. [↑](#footnote-ref-39)
40. Berlin et al., “The Destruction of Slavery,” 17. [↑](#footnote-ref-40)
41. Berlin et al., 20. [↑](#footnote-ref-41)
42. Berlin et al., “The Mississippi Valley,” 255. [↑](#footnote-ref-42)
43. Sherman, “Order by the Commander of the 5th Division of the Army of the Tennessee,” 289–90. [↑](#footnote-ref-43)
44. Berlin et al., “The District of Columbia,” 164. [↑](#footnote-ref-44)
45. Board of Aldermen, Richards, and Dove, “Resolution by the Washington City Council,” 178. [↑](#footnote-ref-45)
46. Berlin, Reidy, and Rowland, “The Black Military Experience,” 7. [↑](#footnote-ref-46)
47. Berlin, Reidy, and Rowland, 6. [↑](#footnote-ref-47)
48. Berlin, Reidy, and Rowland, 7. [↑](#footnote-ref-48)
49. Fish, “Conscription in the Civil War,” 101. [↑](#footnote-ref-49)
50. Fish, 101. [↑](#footnote-ref-50)
51. Levine, “Draft Evasion in the North during the Civil War, 1863-1865,” 816. The need for manpower was sufficiently acute that at one point, the Commander of the Army of Tennessee directed military officials in Georgia to impress slaves to serve as cooks and nurses in service hospitals, to avoid having to reassign active duty soldiers to these tasks. The Georgia high court frowned upon this practice as an inappropriate taking of private property not authorized by Congress. Tyson v. Rogers, 33 Ga. [↑](#footnote-ref-51)
52. Kneedler v. Lane, 45. [↑](#footnote-ref-52)
53. In re Wehlitz, 16 Wis. at 444. He was drafted under the initial less comprehensive enrollment act passed in July 1862. [↑](#footnote-ref-53)
54. In re Wehlitz, 16 Wis. at 446. [↑](#footnote-ref-54)
55. In re Wehlitz, 16 Wis. at 449–50. [↑](#footnote-ref-55)
56. Levine, “Draft Evasion in the North during the Civil War, 1863-1865,” 816. [↑](#footnote-ref-56)
57. Murdock, “New York’s Civil War Bounty Brokers,” 259–61. [↑](#footnote-ref-57)
58. Murdock, 262–63. [↑](#footnote-ref-58)
59. Berlin, Reidy, and Rowland, “The Black Military Experience,” 9. [↑](#footnote-ref-59)
60. Berlin, Reidy, and Rowland, 10. [↑](#footnote-ref-60)
61. Miller, “For His Wife, His Widow, and His Orphan: Massachusetts and Family Aid During the Civil War,” 99. [↑](#footnote-ref-61)
62. Miller, 99. [↑](#footnote-ref-62)
63. Berlin, Reidy, and Rowland, “The Black Military Experience,” 11. [↑](#footnote-ref-63)
64. Berlin, Reidy, and Rowland, 11. [↑](#footnote-ref-64)
65. Berlin, Reidy, and Rowland, “Confederate Recruitment,” 280–81. [↑](#footnote-ref-65)
66. Corbin v. Marsh, 2 Duv. at 194. [↑](#footnote-ref-66)
67. Corbin v. Marsh, 2 Duv. at 195. [↑](#footnote-ref-67)
68. Corbin v. Marsh, 2 Duv. at 198. [↑](#footnote-ref-68)
69. Corbin v. Marsh, 2 Duv. at 210–11. The dissent also noted that by this time the Confederacy was also promising freedom to slaves who agreed to enlist. [↑](#footnote-ref-69)
70. Corbin v. Marsh, 2 Duv. at 222–23. [↑](#footnote-ref-70)
71. Brandwein, *Rethinking the Judicial Settlement of Reconstruction*. [↑](#footnote-ref-71)
72. Berlin, Reidy, and Rowland, “The Black Military Experience,” 25. [↑](#footnote-ref-72)
73. Berlin, Reidy, and Rowland, 25. [↑](#footnote-ref-73)
74. American Freedmen’s Inquiry Commission, “Preliminary Report Touching the Condition and Management of Emancipated Refugees; Made to the Secretary of War,” 16. [↑](#footnote-ref-74)
75. American Freedmen’s Inquiry Commission, 18. [↑](#footnote-ref-75)
76. American Freedmen’s Inquiry Commission, 20. [↑](#footnote-ref-76)
77. American Freedmen’s Inquiry Commission, 21. [↑](#footnote-ref-77)
78. Berlin, Reidy, and Rowland, “Recruitment in the Free States and Free-State Recruitment in the Occupied South,” 77. [↑](#footnote-ref-78)
79. Berlin, Reidy, and Rowland, “Recruitment in the Border States: Maryland, Missouri, and Kentucky,” 183. Nonetheless, to maintain support, Congress authorized payment of $300 to slaveowners whose slaves voluntarily enlisted, a provision that Kentucky’s Court of Appeals declared unconstitutional as an unauthorized and insufficiently compensated taking of property in Hughes v. Todd, 2 Duv. [↑](#footnote-ref-79)
80. Berry, *Military Necessity and Civil Rights Policy: Black Citizenship and the Constitution, 1861-1868*, 51. [↑](#footnote-ref-80)
81. Berlin, Reidy, and Rowland, “The Black Military Experience,” 24. [↑](#footnote-ref-81)
82. Initially, blacks who succeeded in enlisting were paid under the standard pay scale, but when Congress passed the Militia Act of 1862, unequal pay was instituted for black troops, and even the creation and implementation of the Bureau for Colored Troops in May of 1863 did nothing to remedy the situation. Andrew, “Governor of Massachusetts to a Virginia Assistant Superintendent of Contrabands.” [↑](#footnote-ref-82)
83. Andrew, 369. [↑](#footnote-ref-83)
84. Tod and Stanton, “Governor of Ohio to the Secretary of War and Subsequent Correspondence,” 370. [↑](#footnote-ref-84)
85. Tod and Stanton, 370. [↑](#footnote-ref-85)
86. Webster, “Chairman of the Pennsylvania Committee for Recruiting Colored Regiments to the Secretary of War,” 372–73. [↑](#footnote-ref-86)
87. Berlin, Reidy, and Rowland, “Fighting on Two Fronts: The Struggle for Equal Pay,” 364. [↑](#footnote-ref-87)
88. Swails, “Massachusetts Black Sergeant to the Adjutant General’s Office,” 377. [↑](#footnote-ref-88)
89. Swails, 377. [↑](#footnote-ref-89)
90. Brown, “Black Sergeant to the Secretary of War,” 377–78. [↑](#footnote-ref-90)
91. Gooding, “Massachusetts Black Corporal to the President,” 386. [↑](#footnote-ref-91)
92. Bennett and et al., “Officers of a South Carolina Black Regiment to the Adjutant General of the Army.” [↑](#footnote-ref-92)
93. Bennett, “Commander of a South Carolina Black Regiment to the Headquarters of the Department of the South and the Commander or U.S. Forces at Hilton Head to the Superintendent of Contrabands in the Department of the South.” [↑](#footnote-ref-93)
94. Friedrich, “We Will Not Do Duty Any Longer for Seven Dollars a Month.” [↑](#footnote-ref-94)
95. Walker, “Court-Martial Statement by a South Carolina Black Sergeant,” 393. [↑](#footnote-ref-95)
96. Friedrich, “We Will Not Do Duty Any Longer for Seven Dollars a Month.” [↑](#footnote-ref-96)
97. Aptheker, “Negro Casualties in the Civil War,” 39. [↑](#footnote-ref-97)
98. Samito, “The Intersection Between Military Justice and Civil Rights: Mutinies, Courts-Martial, and Black Civil War Soldiers,” 187. [↑](#footnote-ref-98)
99. As but one example, consider the charges filed against Private Sylvester Ray in early June because he refused to accept his lower pay, informing his commander that none of his comrades would re-enlist on these terms. He was later discharged, and his discharge papers indicated the higher pay rate. FIX CITE THIS ISN’T RIGHT Berlin, Reidy, and Rowland, “Fighting on Two Fronts: The Struggle for Equl Pay,” 367–68. [↑](#footnote-ref-99)
100. Berlin, Reidy, and Rowland, 367–68. [↑](#footnote-ref-100)
101. Berry, *Military Necessity and Civil Rights Policy: Black Citizenship and the Constitution, 1861-1868*, 1. [↑](#footnote-ref-101)
102. Bell, “1864 Proceedings of the National Convention of Colored Men with the Bill of Wrongs and Rights and the Address to the American People,” 33. [↑](#footnote-ref-102)
103. Bell, 33. [↑](#footnote-ref-103)
104. Bell, 34. [↑](#footnote-ref-104)
105. Bell, 41. [↑](#footnote-ref-105)
106. Bell, 41. [↑](#footnote-ref-106)
107. Bell, 41. [↑](#footnote-ref-107)
108. Skocpol, *Protecting Soldiers and Mothers*, 138. [↑](#footnote-ref-108)
109. Berry, *Military Necessity and Civil Rights Policy: Black Citizenship and the Constitution, 1861-1868*, 84. [↑](#footnote-ref-109)
110. Hatwood v. State, 18 Ind. 492 (1862). In this ruling, the Court overturned a judgment and fine levied on a mulatto man for establishing a residence in the state, but found that the underlying statute authorizing punishment was constitutional. Illinois took this principle a step further in Nelson v. People, 33 Ill. 390 (1863), upholding a similar provision and finding that part of the basis was blacks’ inability to hold national citizenship. [↑](#footnote-ref-110)
111. Ewald, *The Way We Vote: The Local Dimension of American Suffrage*, 48. [↑](#footnote-ref-111)
112. Ewald, 48. [↑](#footnote-ref-112)
113. White, “Canvassing the Troops: The Federal Government and the Soldiers’ Right to Vote,” 291. [↑](#footnote-ref-113)
114. Chase v. Miller, 41 Pa. 403, 422 (1862). [↑](#footnote-ref-114)
115. Chase v. Miller, 41 Pa. at 428. [↑](#footnote-ref-115)
116. Lehman v. McBride, 15 Ohio at 607. [↑](#footnote-ref-116)
117. Morrison v. Springer, 15 Iowa at 348. [↑](#footnote-ref-117)
118. People ex rel. Twitchell v. Blodgett, 13 Mich. at 140. [↑](#footnote-ref-118)
119. People ex rel. Twitchell v. Blodgett, 13 Mich. at 148. [↑](#footnote-ref-119)
120. People ex rel. Twitchell v. Blodgett, 13 Mich. at 179. [↑](#footnote-ref-120)
121. Chrisman v. Bruce, 62 Ky. at 63. [↑](#footnote-ref-121)
122. Anderson v. Miller, 23 Md. at 619. [↑](#footnote-ref-122)
123. State v. Murphy, 41 Mo. at 366–67. [↑](#footnote-ref-123)
124. State v. Murphy, 41 Mo. at 369. [↑](#footnote-ref-124)
125. State v. Murphy, 41 Mo. at 372. [↑](#footnote-ref-125)
126. State v. Staten, 46 Tenn. at 237. [↑](#footnote-ref-126)
127. State v. Staten, 46 Tenn. at 254–55. [↑](#footnote-ref-127)
128. Ewald, *The Way We Vote: The Local Dimension of American Suffrage*, 51. [↑](#footnote-ref-128)
129. Ewald, 51. [↑](#footnote-ref-129)
130. Ewald, 50. [↑](#footnote-ref-130)
131. Ochiai, “The Port Royal Experiment Revisited: Northern Visions of Reconstruction and the Land Question.” [↑](#footnote-ref-131)
132. Johnson, “Speech to the House.” [↑](#footnote-ref-132)
133. Johnson. [↑](#footnote-ref-133)
134. Johnson. [↑](#footnote-ref-134)
135. Johnson. [↑](#footnote-ref-135)
136. Johnson. [↑](#footnote-ref-136)
137. Brandwein, *Rethinking the Judicial Settlement of Reconstruction*, 28. [↑](#footnote-ref-137)
138. Brandwein, *Rethinking the Judicial Settlement of Reconstruction*. [↑](#footnote-ref-138)
139. Stanley, *From Bondage to Contract: Wage Labor, Marriage, and the Market in the Age of Slave Emancipation*; See also Yamin, *American Marriage: A Political Institution*. [↑](#footnote-ref-139)
140. Yamin, *American Marriage: A Political Institution*, 23–46. [↑](#footnote-ref-140)
141. Rodrigue, “Labor Militancy and Black Grassroots Political Mobilization in the Louisiana Sugar Region, 1865-1868,” 116–17. [↑](#footnote-ref-141)
142. Rodrigue, 120. [↑](#footnote-ref-142)
143. Rodrigue, 126–29. [↑](#footnote-ref-143)
144. The most notable instance was the Colfax Massacre, which involved the murder of more than 100 black men, many of whom were local law enforcement officers, by an organized mob of whites. The Massacre ultimately resulted in the Supreme Court’s ruling in *Cruikshank v. United States*, which disallowed the federal prosecution of the perpetrators because the pleadings insufficiently acknowledged the violence’s linkage to race. See Brandwein, *Rethinking the Judicial Settlement of Reconstruction*. [↑](#footnote-ref-144)
145. Yamin, *American Marriage: A Political Institution*. [↑](#footnote-ref-145)
146. Pascoe, *What Comes Naturally: Miscegenation Law and the Making of Race in America*, 40–46. [↑](#footnote-ref-146)
147. Pascoe, 41. [↑](#footnote-ref-147)
148. Novkov, *Racial Union: Law, Intimacy, and the White State in Alabama, 1865-1954*. [↑](#footnote-ref-148)
149. Williams v. Waters, 36 Ga. [↑](#footnote-ref-149)
150. Hunt v. Wing, 57 Tenn. at 144. [↑](#footnote-ref-150)
151. Hunt v. Wing, 57 Tenn. at 146. [↑](#footnote-ref-151)
152. Gazley v. Wayne, 36 Tex. [↑](#footnote-ref-152)
153. Holloway v. Brinkley, 42 Ga. [↑](#footnote-ref-153)
154. Smith v. Summerlin, 48 Ga. [↑](#footnote-ref-154)
155. Allen, Preer & Ingles v. Smith, 45 Ga. [↑](#footnote-ref-155)
156. Cannon v. Stuart, 8 Del. [↑](#footnote-ref-156)
157. Thomas v. Newcomb, 64 Ky. at 84. [↑](#footnote-ref-157)
158. Thomas v. Newcomb, 64 Ky. at 85. [↑](#footnote-ref-158)
159. Small v. Small, 65 Ky. at 48. [↑](#footnote-ref-159)
160. Ferrell v. Boykin, 61 N.C. at 9. [↑](#footnote-ref-160)
161. In re Ambrose, 61 N.C. at 95–96. [↑](#footnote-ref-161)
162. In re Ambrose, 61 N.C. at 96. [↑](#footnote-ref-162)
163. Alfred v. McKay, 36 Ga. at 441. [↑](#footnote-ref-163)
164. Timmins v. Lacy, Tex. 30 at 115. [↑](#footnote-ref-164)
165. Timmins v. Lacy, Tex. 30 at 116. [↑](#footnote-ref-165)
166. Timmins v. Lacy, Tex. 30 at 135. [↑](#footnote-ref-166)
167. Timmins v. Lacy, Tex. 30 at 137. [↑](#footnote-ref-167)
168. Timmins v. Lacy, Tex. 30 at 138. [↑](#footnote-ref-168)
169. Leckie and Leckie, *The Buffalo Soldiers: A Narrative of the Black Cavalry in the West*, 5. [↑](#footnote-ref-169)
170. Leckie and Leckie, 6. [↑](#footnote-ref-170)
171. Leckie and Leckie, 6. [↑](#footnote-ref-171)
172. Leckie and Leckie, 8–10. [↑](#footnote-ref-172)
173. Schubert, *Black Valor: Buffalo Soldiers and the Medal of Honor, 1870-1898*, 5. [↑](#footnote-ref-173)
174. Schubert, 5. [↑](#footnote-ref-174)
175. Schubert, 8. [↑](#footnote-ref-175)