

Weevils in the Wheat: Free Blacks and the Constitution, 1787-1860

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Standing before an Iowa religious convention in the 1850s, Sojourner Truth, women's rights advocate and antislavery speaker, delighted her audience with her analysis of the American Constitution. With a dry wit that was her trademark on the abolitionist circuit, this former slave, the first black woman antislavery speaker in the nation, compared the Constitution to the mid-western wheat which during the 1850s was suffering from the boll weevil blight. From a distance the countryside looked deceptively beautiful but on a closer look one might see the ravishes of the blight. The Constitution was much the same, said Sojourner--"I feel for my rights, but there ain't any there." As weevils besieged the wheat, prejudice and bigotry threatened to undermine constitutional guarantees. As Sojourner saw it, American civil rights and liberties were endangered. The Constitution had "a little weevil in it."

In the generations between the Revolution and the Civil War, black people struggled with the weevils in interpretations of the Constitution which denied them citizenship rights. Most blacks believed that their citizenship was protected by the Constitution and by the ideals expressed in the Declaration of Independence. The founding fathers did not specifically mention race as they set out the self-evident truths by which they justified national independence. Although they certainly did not include slaves among those referred to as "the people," they were ambiguous on the status of the free people of color.

Black Citizenship There were several early indications that the federal government did not consider free blacks full citizens. Despite their significant presence in the American Revolutionary forces, the post-war national militia excluded blacks and early naturalization laws limited the process to white aliens. In the first two decades of the nineteenth century, blacks could not carry the federal mail or hold elective office in the District of Columbia.

Nor did the Constitution protect free blacks from limitations imposed by the individual states. From 1819, when Maine joined the union, until after the Civil War, every new state denied the vote to free blacks and many did not allow them to serve on juries or even to testify in court cases involving whites. Constitutional protections did not prevent states like Ohio, Illinois, Indiana, and Oregon or the territory of Michigan from barring free blacks or from requiring substantial bonds as a prerequisite to their emigration. The Northwest Ordinance, adopted by Congress in 1787, forbade slavery in this Northcentral region, but it did not assure the civil rights of free blacks in the area. Even in states like Massachusetts and Pennsylvania, which did not restrict black emigration, there was serious discussion of such action. Save for two votes in its constitutional convention of 1850, California would have barred blacks. Clearly weevils abounded.

The question of black citizenship was further complicated by the fact that although many states obviously precluded it, others did not. Before 1820, free black men in Massachusetts, New Jersey, Pennsylvania, New York, Maine, Vermont, Connecticut, Rhode Island, and New Hampshire voted on an equal basis with white men. Ironically, they lost that right in New Jersey, Connecticut, and Pennsylvania before the Civil War. In New York, black voters had to meet property ownership requirements that were removed for whites during the democratic reforms of the Jacksonian era. Yet

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Afro-American political participation in states where it was allowed lent legitimacy to the claim of free black citizenship.

Several federal actions also seemed to imply that, on occasion, the Constitution protected blacks. A few blacks received passports to travel abroad under the aegis of the United States during the 1840s and 1850s. At times the federal government also moved to safeguard the rights of free blacks at home as well. In response to the contentions of slaveholders that free blacks had a dangerous effect on slaves, in 1822 the South Carolina legislature passed the Colored Seamen's Act requiring the imprisonment of all free black seamen for the time that their ships remained in South Carolina ports. Moreover, the ship's captain had to pay the cost of the seaman's imprisonment, an amount he often deducted from the seaman's wages. If the captain refused, the seaman was sold into temporary slavery to compensate local authorities. Other southern states adopted similar laws. Since the sea offered a major source of employment for thousands of free blacks before the Civil War, this provision posed a major threat to the free black community. In response to protests by free blacks and northern white reformers, a congressional committee investigated these policies and determined that they violated the Constitution. The committee did not express an opinion on the question of black citizenship, however. In 1823 the Supreme Court supported congressional judgment by declaring such laws unconstitutional. (Despite this ruling, several southern jurisdictions continued the practice until the Civil War.)

Although officials interpreted the Constitution inconsistently as it applied to free blacks, Afro-Americans insisted on their fundamental right to its protections. They had stood with other patriots against "British tyranny" and when Thomas Paine, Samuel Adams and other white patriots declared that Americans would never be slaves, blacks agreed wholeheartedly. Throughout the Revolution, as five thousand of them served in the cause of American liberty, blacks continued their call for the abolition of slavery. A group of 19 "natives of Africa freeborn" in Portsmouth, New Hampshire, reminded white patriots that "public and private tyranny and slavery are alike detestable" and that "the God of nature gave [blacks] life and freedom, upon terms of the most perfect equality with other men."

Afro-Americans drew allies from the ranks of Quakers, who had opposed slavery for a generation before the Revolution, and from more recent converts, who saw an inconsistency between emerging American principles and American slavery. Abigail Adams wrote to her husband John of her discomfort with Afro-American bondage. "It has always seemed a most iniquitous scheme to me," she wrote, "to fight ourselves for what we are daily robbing and plundering from those who have as good a right to freedom as we have." Abigail Adams did not stand alone in her opposition to slavery. In northern states where the institution was less economically important than in the rich plantation areas of the South, the anti-slavery movement grew during the post-Revolutionary period, attracting such notables as Benjamin Franklin of Pennsylvania, John Jay, Alexander Hamilton and Aaron Burr of New York, and Moses Brown of Rhode Island.

Blacks and their white allies used the language of the Constitution to prod the conscience of the nation. This strategy succeeded in the North because slaveholders there had less economic and political power. In the South, such arguments moved a few masters to individual acts of emancipation but found little legislative support. By 1804 slavery, which had been practiced in all thirteen colonies, was abolished or set on the road to abolition by gradual emancipation plans in all northern states, isolating that institution in the South. There it remained until uprooted by civil war.

The legal position of southern free blacks during the antebellum years was a complicated one. Living in the midst of slavery, free blacks in the South were an enigma to the slaveholding society. They were always viewed as suspect and potentially dangerous to the institutions of slavery. The liberty extended to southern free blacks was minimal and did not include the right of protest. So precarious was their freedom that on the eve of the Civil War, South Carolina seriously debated enslaving its free blacks. Nowhere in the North did blacks face that kind of official action.

In the North, blacks were especially equipped to demand their rights from the new government. During the colonial period slaveholding in that region was on a small scale. Except for the great

explanation-like estates of the Hudson valley in New York and the Narragansett region of Rhode Island slaveholdings averaged about two slaves each. Under these circumstances newly imported Africans were often isolated from one another but they came into regular contact with whites. Unlike slaves on the large plantations of the South who maintained a variety of African traditions well into the nineteenth century and beyond, northern slaves made a more rapid transition from African to AfroAmerican, quickly learning the language and the customs of their captors. Northern blacks did not forget African cultures and traditions; rather, they modified and combined them with those of Europe. Northern Afro-American culture became the practical blend of Western culture and the many different cultures of Africa.

Thus northern blacks on the eve of the Revolution knew well the rhetoric and the ideals of American liberty, and they used the instruments of democracy to communicate their requests to governmental authority. Time and again, slaves petitioned the courts and the legislatures for their freedom. Astutely they appealed to American political and religious ideals in their message. "We expect great things," wrote one group of slaves to the Massachusetts General Court, "from men who have made such a noble stand against the designs of their fellow men to enslave them." Throughout the northern states slaves pressed for their freedom during the 1770s and 1780s using the language of America's independence movement. Their message was simple. Slaves asked no more from the new nation, "this free and Christian country," than slaveholders had demanded from the Old World-freedom.

Northern blacks also used this tactic in their campaign for civil rights after they won freedom. For two years, between 1778 and 1780, John and Paul Cuffe, two free black ship merchants of West Port, Massachusetts, refused to pay their land taxes so long as their home state did not allow blacks to vote. In the state courts and at local town meetings they argued in strong language calculated for effect. They would not submit to "taxation without representation." Their action encouraged the state to redraft the 1778 version of its constitution which contained no bill of rights and restricted voting by race. The final constitution, adopted in 1780, did not limit black voting and was later interpreted as prohibiting slavery.

Black Organizations Throughout the nineteenth century, free blacks continued to employ the language of the Revolution and the structure of democracy in the formation of their community institutions and in the strategy of their antislavery and civil rights protests. As northern blacks emerged from slavery, they established many mutual aid and benefit societies. Long before the federal government provided aid to the poor, Afro-Americans depended upon these organizations during times of crisis and economic hardship. For a people restricted by racial discrimination to the least reliable and lowest paying jobs, the work of these organizations proved indispensable in providing aid to widows and dependent children, workman's compensation and unemployment insurance, and basic charity services. Although state and local governments sometimes aided needy whites, they often ignored blacks or gave them diminished benefits. Usually, blacks relied on their own communities or on the support of progressive whites who were committed to the abolition of slavery and to the improvement of the condition and the welfare of the "free people of color." In Philadelphia and New York, for example, Quakers operated schools and charity agencies for blacks.

These groups were established on the democratic model. They set forth their principles and purposes in organizational constitutions or similar documents in words reminiscent of the Constitution. "We, the African Members" began the Laws of the African Society founded in Boston in 1796. "We, the Subscribers do form ourselves into an Association, for the benevolent purpose of raising funds . to aid and assist the widows and orphans of deceased members ." read the Constitution of the New York African Clarkson Association in 1825. The opening of the Constitution and By-Laws of the Brotherly Union Society in Philadelphia in 1833 contained similar language. These documents were divided into "articles" and often prefaced by "preambles." They provided for democratic functions including the election of officers (presidents, vice presidents, secretaries, and treasurers) and for policy decided by majority vote of the membership.

Black Voters Afro-American community organization extended to political associations. Like other Americans of the period, blacks sought ways to consolidate and exercise political influence. Such influence was slight but it did exist in the early years of the nineteenth century in states where blacks held the franchise. Afro-American voters were not overwhelming in numbers but in some cases they could affect the outcome of important elections because of their strategic location. In New York City, for example, one opponent of suffrage for blacks lamented that "the votes of three hundred Negroes in the city . decided the election [1813] in favor of the Federal party, and also decided the political character of the legislature of this state." He no doubt exaggerated the impact of the black vote, but his point remained.

Aware of the important role Federalist party members had played in the antislavery campaigns of the late eighteenth and early nineteenth century, free blacks organized to support the party at the polls. The Federalist party, as a result of its unpopular stance in opposition to the War of 1812, lost power and passed from the political scene before the 1820s. Black voters, left with little support against growing Democratic opposition to their political rights, shifted their allegiance to the Whig Party and later the Liberty Party, Free Soil Party, and finally the Republican Party on the eve of the Civil War. Sophisticated in the ways of democratic politics, blacks operated through a variety of groups, striking political alliances where possible, in the expression of their collective will as American citizens.

The courting of black votes by Whigs and Free Soilers in Providence, Rhode Island during the 1848 presidential election exemplified the recognition of the strategic positioning of black voters in that state. The Whig candidacy of Zachary Taylor, a Kentucky slaveholder, for president strained traditional Afro-American support for that party. The choice offered by the Free Soil party proved no less complicated. Although the free soilers sought to prevent the spread of slavery to the western territories, a policy enthusiastically endorsed by blacks, their presidential candidate was former Democratic President Martin Van Buren, of New York, who had strong ties to the slaveholding South and in the past had supported slavery in Washington, D.C.

Afro-Americans organized on both sides. Frederick Douglass, powerful abolitionist and former slave, lent his prestige to the Free Soil campaign, urging that Van Buren's promise to support the abolition of slavery in the District of Columbia in the future be taken as a sign of his conversion to "free soil" principles. Conversely, many local Providence black leaders and several black newspapers encouraged Afro-Americans - to stay with the Whigs. At election time, the Whigs carried the day with Taylor receiving almost all the city's black vote which accounted for at least one third of the Whig victory margin in the county of Providence. Thus, politicians and parties at all levels recognized black citizenship when blacks political participation brought them rewards. Unfortunately, such recognition was rare.

Colonizationism Assertions of Afro-American citizenship faced a severe challenge from the activities of the American Colonization Society. Founded in 1816, this group sought to encourage the colonization in western Africa of free blacks and slaves subsequently freed. The most liberal colonizationists hoped that if they could assure southern masters that free blacks would be settled outside the country, more would consent to manumit their slaves. Other colonizationists saw the plan as an opportunity to rid the nation of troublesome free blacks. Although colonization never attracted wide support among -free blacks, some expressed a willingness to emigrate to Africa. Early in the nineteenth century, ship merchant Paul Cuffe advocated African" emigration and even transported a group of 38 blacks to the West African colony of Sierra Leone in 1815. Cuffe's efforts encouraged such white colonizationists as Henry Clay, Daniel Webster, Supreme Court Justice Bushrod Washington, Francis Scott Key, and others to establish their society a year later.

Despite the interest of many blacks in Providence, Philadelphia, and Boston, most free blacks disapproved of colonization. In several mass meetings before 1820, Philadelphia blacks took the lead in protesting the plans of the new society. The colonizationist's acquisition of territory in West Africa which became the society's colony of Liberia in 1822 heightened the interests of many

southern free blacks but nearly all northern blacks remained opposed. So strong was the opposition among northern blacks that when John Russwurm, cofounder of *Freedom's Journal*, the nation's first black newspaper (New York city) 1827), became a supporter of colonization the resultant hostility forced him to leave the paper.

Black opposition to the American Colonization Society had complex sources. It included great suspicion of the motives of an organization which counted some of the most prominent slaveholders in the country among its membership. Blacks feared the unstated motive behind colonization plans- to remove free blacks from the nation, thus silencing the most vocal opponents of slavery and making slaveholdings more secure. Beyond these suspicions, blacks also resented the notion, implicit in the colonization program, that they had no right to American citizenship. 'This is our home," declared a speaker at a Philadelphia meeting, "and this is our country. Beneath its sod lie the bones of our fathers; for it some of them fought, bled, and died. Here we were born, and here we will die."

The Colonization Society portrayed its aims as enlightened philanthropy which realistically addressed the nations race problem. Supporters of colonization believed it impossible that blacks could find acceptance as fellow citizens by white Americans and saw African colonization as the only humane alternative. Afro-Americans - disagreed--- "Our condition can be best improved in this our own country and native soil, the United States of America," wrote a black abolitionist in the pages of the *Liberator* in 1831. Most free blacks argued that they would never willingly relinquish rights for which they paid dearly in the Revolution and again in the War of 1812.

In their anti-colonizationist struggle, which continued throughout the pre-Civil War years, free blacks constantly appealed to the Constitution and the Revolutionary ideals which they insisted guaranteed their freedom and civil rights. Beginning in the early 1830s, AfroAmericans met in national conventions to discuss and organize a response to the growing influence of the "Slave Power" and to colonizationist plans. On September 20, 1830, approximately thirty delegates representing five states met in Philadelphia's Bethel Church for five days to propose strategies for dealing with the problems of black America. In the first line of the convention proceedings, these delegates proclaimed a commitment to the spirit of the Declaration of Independence. The next year, delegates resolved that the Declaration and the Preamble of the Constitution be read at the opening of each convention. They asserted: 'Truths contained in the former document are incontrovertible and . the latter guarantees in letter and spirit to every freeman born in this country all the rights and immunities of citizenship."

'Slaveholder's Document' Although this commitment to the Constitution and the Declaration was sorely tested, it never broke, though revered Afro-American leaders and white allies challenged the notion that these documents protected black rights and opposed human bondage. The Constitution endorsed the apprehension and return of fugitive slaves to masters even when slaves managed to escape into free states or territories. It had also allowed the continuance of the African slave trade to American dealers until 1808. Indeed, the adoption of the Constitution had hinged upon a series of compromises which granted additional national representation to slave owners according to the extent of their slave holdings. The Constitution itself, not simply the actions of proslavery national officials, sustained slavery.

By the 1830s, white abolitionist editor William Lloyd Garrison moved to this position and took a radical stand against the Constitution. On several public occasions, he denounced and burned copies of it as a "slaveholder's document" Some blacks, following Garrison's lead, also attacked the Constitution as pro-slavery. Until the late 1840s, Frederick Douglass disdained it "as a most foul and bloody conspiracy against the rights of three millions of enslaved and imbruted men." Douglass supported Garrison's antipolitical stand reasoning that "until the government and the Constitution were replaced by institutions which would better answer the ends of justice, no true friend of liberty in the United States could [in good conscience] vote or hold office."

At the American Anti-Slavery Society's meeting in New York in 1844, black delegate Thomas Van Rensselaer called on blacks to "have nothing to do with the government [of the United States]; and as regards the Constitution, . have nothing to do with that instrument." Other blacks in Massachusetts again challenged the government on the grounds of "taxation without representation." In defiant language one black Bostonian urged his fellows to exert economic pressure in the fight for civil rights: "Let every colored man, called upon to pay taxes to any institution in which he is deprived or denied its privileges and advantages, withhold his taxes, though it may cost imprisonment or confiscation. Let our motto be--No privileges, no pay." By the end of the 1840s, a growing number of blacks agreed. "The government does not protect my rights, and I will not support such a government," said black abolitionist Charles Lenox Remond in 1847. "Show me a Constitution which protects the rights of all men and I'll sustain that."

Despite such pronouncements by Garrisonian abolitionists, most free blacks continued to assert their rights as citizens under the Constitution. When in 1837 Pennsylvania considered a state constitution which deprived blacks of the right to vote, Afro-Americans argued in petitions to the legislature that they were citizens both of the state and the nation. Afro-American citizens of Pennsylvania reminded the leaders of their state that "among all the rights of a Republic none are so sacred, and among all the safeguards of the liberties of freemen none are so powerful, as the right of suffrage." To deprive black people of that right after all they had done for the state and the nation, they charged, was an affront to democratic principles and an "insult and mockery to the Almighty Creator of all things and Judge of all men." These appeals did not succeed in, preventing the disenfranchisement of blacks in the state, but the claim that such discrimination was a violation of the federal Constitution and an insult to God's plan for human development became the standard argument echoed throughout the 1840s.

In 1843 the state convention of Afro-Americans in Michigan passed a resolution to that effect, but there also were dissenting delegates. A year later New York blacks convened a state gathering to argue in similar tones for the extension of the vote to Afro-Americans in that state. At the end of the decade, black Ohioans used the appeal to God and the principles of the founding fathers to bolster their drive for an extension of civil rights in their state. In all these actions minority voices argued the inappropriateness of such appeals and that the Constitution offered no protection for their race.

The debate among blacks continued into the 1850s, but during that pre-Civil War decade most came to believe that interpretations of the Constitution as not protecting black rights perverted its Revolutionary ideals. In the spring of 1850, Afro-American abolitionist Henry Bibb addressed a meeting of Boston blacks denouncing the failure of the federal government to fulfill its obligation to all Americans. He called upon his listeners to participate in the move to "correct the public sentiment [and] get the Constitution and the people right." Even Douglass reversed his anti-Constitution position during these years, focusing his condemnation not on that document but on those who, for their own purposes, would subvert it. The Bible is not a "bad book" simply because it was used for evil, he said. "Me slaveholders of the South, and many of their wicked allies in the North, claim the Bible for slavery; shall we therefore fling the Bible away as a pro-slavery book?" He believed not--"It would be as reasonable to do so as it would be to fling away the Constitution."

Eve of Civil War Yet even as most blacks argued for this stand during the 1850s, Afro-American protests became more strident after Congress passed the fugitive slave law of 1850. The new law not only made the retrieval of fugitive slaves easier but, because one captured as a runaway could not testify in his or her own defense, it also endangered the liberty of free blacks. Angry and discouraged with the prospects of ever forcing whites to recognize their citizenship rights, a sizable minority of blacks again turned to the notion of African colonization.

The emergence of Liberia: as an independent nation in 1848 renewed Afro-American interest in African emigration. The leadership of militant blacks like Dr. Martin R. Delany of Pittsburgh replaced the moderate to conservative white leadership of the earlier American Colonization Society making the possibility more acceptable. Starting in 1850, several black organizations like the Liberian Agricultural and Emigration Society (1851) and the African Civilization Society (1858) attracted a

considerable following. Yet emigration continued as a distinctly minority position. Most blacks elected, as Dr. John Rock of Boston explained, to "remain in this country and try to make it worth living in." On the eve of the Civil War, blacks continued to debate the wisdom of leaving the American land of their birth for the African land of "their opportunity." Most held fast to their rights as Americans.

The events of the late 1850s, however, made claims of black citizenship constitutionally moot. In *Dred Scott v. Sandford* (1857), the Supreme Court held that Scott remained a slave even though he had lived for a number of years, with his master's consent, outside a slave state. The court had, seven years earlier, rendered a similar judgment in the case of *Strader v. Graham* (1850). More disheartening, however, was Chief Justice Roger B. Taney's conclusion that Afro-Americans, slave or free, were not citizens of the United States and were not entitled to the protections of the Constitution. Although like opinions had been expressed by members of the federal government, never before had the highest court made such a clear statement on the matter.

Blacks debated the *Dred Scott* ruling until the outbreak of the Civil War. Some considered it "illegal." Others asked what else might be expected from a court which represented "pro-slavery doughfaces" and "Democratic slave-breeders." That blacks continued to vote in five New England states and in New York (with property requirement restrictions) further complicated the issue as did the support they received in their denunciation of the court decision from white allies, many of them state or federal government officials.

By the mid-1860s, this debate had become a constitutional dead letter, as the Civil War changed the mood of the Congress and ultimately changed the wording of the Constitution. First in the Civil Rights Act of 1866 and then in the Fourteenth Amendment, ratified in 1868, black citizenship was finally guaranteed. Although, as would soon become clear, these guarantees did not ensure the protection of their constitutional rights, blacks were at last irrefutably American citizens. For most black Americans, these acts provided the formal constitutional recognition of a status they had never doubted was their due.

Throughout the antebellum period, blacks drew upon America's most cherished ideals in their struggle against slavery and for civil rights. They argued for the fair application of constitutional rights irrespective of color. They demanded no more and determined to accept no less. Within the American context, the concept of racial equality seemed a radical one. Yet most blacks willingly pressed their demands within the moderate bounds of the 'American constitutional framework. They accepted movement in evolutionary steps towards equality through the popularly sanctioned routes of education, hard work, and respectability. They resented having to "prove" their fitness for citizenship, but most consented to do that required of them, but of no other native-born American.

Most Afro-Americans maintained a reverence for America's promise as set forth in its statement of purpose. Although there may have been disagreement on whether the Constitution protected black rights, blacks always insisted on their right to citizenship by virtue of their birth, their commitment to the ideals of the American Revolution and their service in the struggle to achieve and protect American freedom. A century later, the struggle to achieve the reality of America's promise continues.

Suggested additional reading: Curry, Leonard P., *The Free Black in Urban America, 1800-1850: The Shadow Of the Dream* (1981).

Cottrol, Robert J., *The Afro- Yankees., Providence's Black Community in the Antebellum Era* (1982).

Dick, Robert C., *Black Protest: Issues and Tactics* (1974).

Franklin, John Hope, *From Slavery to Freedom: A History of Negro Americans*(1979).

Finkelman, Paul, *An Imperfect Union: Slavery, Federation, and Comity* (1981).

Horton, James Oliver and Lois E. Horton, *Black Bostonians: Family Life and Community Struggle in the Antebellum North* (1979).

Litwack, Leon F., *North of Slavery: The Negro in the Free States, 1890-1860* (1961).

Sweet, Leonard I., *Black Images of America, 1784-1870* (1976).

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