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**Rhetorical Images of Black America: reformulating *we the people*
during the Civil War (1861-1866)**

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Resumo

O presente trabalho se propõe a complementar a análise presente no livro *Civic Ideals* de Rogers Smith (1997), discutindo a forma como diferentes tradições políticas (liberal, republicana e o que chamaremos de *ascriptivist*) influenciaram as leis de cidadania norte-americana ao longo da Guerra de Secessão. O artigo se concentra na forma como a percepção da elite política branca norte-americana sobre a posição do negro — livre ou escravizado — se alterou ao longo do conflito. Para isso, o artigo analisa discursos e editoriais publicados nos estados do norte nos momentos cruciais do conflito, em relação à cidadania negra. Enfocaremos no jornal *New York Tribune*, ligado ao Partido Republicano, para entender o processo retórico pelo qual o negro passou de propriedade para cidadão, e discuto os limites da inclusão política dos libertos em uma sociedade marcada pelo racismo e por concepções de nação baseadas na ancestralidade anglo-saxã. Nos debates entre radicais abolicionistas, moderados e conservadores escravistas, houve claros avanços no reconhecimento da humanidade do liberto, e em seus direitos civis básicos, mas não percebemos a formulação de um novo "nós, o povo" que incluía aqueles recentemente escravizados. Para concluir, o artigo discute a capacidade da linguagem liberal de gerar mudanças profundas na estrutura social, sem o reconhecimento das relações de poder existentes.

Introduction



Thomas Waterman Wood (1866). *The Contraband, The Recruit, The Veteran*

The changes brought by The Civil War Era in the American political economy, constitutional framework and citizenship laws have received well-deserved attention by uncountable scholars, since the very end of the conflict (Ackerman 1998; Bensel 1990; Foner 1989; McPherson 1988). The war did not simply resolve an anterior dispute between North and South (or between the Republican Party and the slaveholders), but it also generated a "third" society, different from both the Republican and Southern ideals of the *antebellum* period. The electoral disputes between the 1856 and 1860 presidential elections were characterized as contests of parties claiming to represent the interest of the white man (Gienapp 1987, 354-5). However, the major change brought by the war was not related to white America. The abolition of slavery and the use of black troops by the Union army represented changes in the political grammar of the period, with its effects most strongly felt in the vocabulary related to Black America. The three paintings presented as epigraphs in this paper summarize some of these shifts in the self-image of the American public. From the image of the grateful contraband of war, recently escaped from *its* former master though not yet liberated from *its* condition of object passible of being owned, to the proud Veteran whose wounds prove his capacity of fighting for his own liberty, and also sacralize his attachment to the land he fought to defend. Thomas Waterman Wood successfully represented part of the narrative of Abolitionists and Radical Republicans in these three portraits. Besides the changes of postures and *naming*, from grateful to proud, from contraband to veteran, it is worth noting the weapon he carries once he is finally recruited, for this is a crucial passage in the changes we will

notice in the wartime vocabulary. It is crucial to the Republican narrative to emphasize the middle painting, when the former property of an individual master becomes something halfway to a full citizen. These portraits tell a congratulating story about the effects of the war, and of the participation of black troops in it, and we know that the movements for black inclusion were not as complete as it might be understood by only these paintings. However, they show the imagination of a New England man over the transformations the end of slavery forced into the American polity. In some instances, the equality proposed by such an imagination certainly benefitted the freedmen. However, the notion that the end of bondage and military experience were the only requirements to such equality might have been a barrier to the achievement of a broader and more durable condition of freedom to the former slaves.

In his *Civic Ideals*, Rogers M. Smith (1997) shows the constant presence of multiple political traditions in American history. Opposing notions of consensus (either liberal or republican) in the American self-image, he argues that even in periods of relative inclusion in citizenship statutes (such as the Civil War and Reconstruction Eras), what he calls *ascriptive* ideals of the American people remained strong enough to prevent further movements of belonging. There are a number of possible critiques to this argument.

Even though we will agree that disputes over how to ascribe *the people* were part of the failures of black inclusion in the post-war, there is another methodological problem. Smith wants to explain the emergence of specific citizenship laws by the tradition that motivated them, or "that liberalism [...] led to more inclusive views [...], and ascriptivism [...] to less inclusive views" (Gerring 2003, 94). However, as shows Gerring, there is a circularity aspect to this explanation, since Smith doesn't separate his independent variables from the dependent. Prior to their actions, we cannot recognize liberals, republicans, or *ascriptivists (idem)*. Smith treats citizenship laws as *proxy* of ideas of citizenship, and, at the same time, wants to establish a causal relation between the former and the latter. We intend to complement Smith's analysis by building a descriptive argument on the change in political vocabulary in the war period that legitimized different forms of polity organization. As we will see the position of the black man in the legislator's mind changed, due to a) to the military need to emancipate the slaves and use them as soldiers, and b) their own participation

in the war effort. This change in vocabulary was not completed without dispute between radicals, moderates and conservatives, and certainly was not motivated only by a sense of justice towards the freedmen, as well as for a will to punish the slaveholding class that caused the war.

To accomplish this, the paper will draw special attention not to statutes and laws, but to editorials and debates around pivotal moments regarding black citizenship. The focus of the analysis will be the *New York Tribune*, edited by Republican Horace Greeley, debates in the *Congressional Globe*, and speeches and letters by President Lincoln, Secretary of State William Seward, and black abolitionist Frederick Douglass, between 1861 and 1866, with the creation of the Freedmen's Bureau. Since the Republican Party had a sufficient majority throughout this whole period, due to the exclusion of congressmen from rebel states, our analysis is organized as a study on the Republican Party.

As the debates over black citizenship evolved during the conflict, with the vocabulary changing in a direction that made previously radical opinions acceptable after few years, we will note a dispute over who is the *first person*, the *we*, in the American polity. The changes the war brought to blacks were also felt on the whole of the *people*, making an isolated account of blacks incomplete. There are three distinct "we" in debate. First, a (white) "North", mobilized against the rebellion, with the major goal of unification and certain pressures for broader war objectives. Second, an (also white) "Union", which is very present on Lincoln's speeches on his family metaphors. Finally, a broader *we*, rarely mentioned even by radicals. Its presence is stronger in the provocative speeches by Frederick Douglass, in which the first person refers to an American people both white and black. The discussion over the change in the meaning of the people is influenced by Jason Frank's *Constituent Moments*. There, Frank argues about "the people's political capacity for democratic self-creation" (Frank 2010, 223), that is, by performative acts of speech, there is not simply an inclusion of previously excluded groups, but a creation of a new, or a third, *us*. The debate over black inclusion, and the failures of Reconstruction, should be traced on both levels: ideas of what is the black man, and ideas of what is the American people. The first level is more explicitly uttered by the actors we will study, while the second is usually implied in their white supremacist, free labor, or abolitionist ideologies. Our

object of inquiry is thus this common language under which the debates over citizenship and black placement within the American polity were fought.

From property to personhood — black images in northern (white) minds

In order to guarantee a better chance of winning the 1860 presidential election, the mainstream of the Republican Party chose a moderate strategy concerning the question of slavery. This rhetorical strategy is clearly stated on Lincoln's first inaugural, delivered after the secession of the Deep South. His speech is not directed towards his fellows Republicans, or to the blacks he wished were not enslaved. His speech is directed to Southern whites, promising to respect their rights of *property*. The property condition of blacks in the slave States was a matter of "legal obligation" that ought to be respected by both sections of the country. The sections, after all, are more attached than a husband and wife, whose divorce may cause separation. The American (white) family, to Lincoln, cannot separate¹. Most anti-slavery speeches and writings connected and naturalized blacks to their condition of property. Also, white anti-slavery did not include blacks either within the first person (the *we*), or the second (the *you*). Once the war started, as fugitive slaves ran to Union lines, the "contraband controversy", as reported in Republican *New York Tribune*, reinforced this form of language.

As white rebels gathered arms to defend a right of property, the language of property (contraband) gave anti-slavery the legitimacy to defend what would become emancipation, while calling it "confiscation." The preoccupation with operating within the Constitutional framework of property rights, though in adherence with the condition of rebellion, is explicit in the guarantee of "promptly" return to slaveholders who took an oath of loyalty. During the first six months of conflict, this contraband controversy was mentioned several times in the *Tribune*, which described the situation as an opposition between loyal and disloyal Americans, and how each of these deserved to have their right of property respected. In Maryland, slaves were returned to their masters, to their own "surprise" (*idem*), confirming Lincoln's defense months earlier, of a war only for Union, with no claims of changing the status of black men. The question imposed by the rapid increase in the number of "such contrabands of war [...] endowed with speech and locomotive powers" was what to do

¹ Quotes from Lincoln's First Inaugural, available at <http://avalon.law.yale.edu/19th_century/lincoln1.asp>

with them, as integration within white America was not seen as an option (*NYTrib*, 07/08/1861). Despite the extension of the "self-evident truths" present in the Declaration of Independence to African-Americans that the anti-slavery movement had been claiming since the 1850's, the endurance of a language of property when referring to blacks made it unlikely that any would visualize an alternative for the liberated other than colonization. As *confiscation* increased, alternative plans of colonization flooded the Tribune in the summer and fall of 1861. These invariably placed a discussion on the proper place of the "black race." The *Tribune* recommended internal colonization, in Florida. Finally, colonization within the borders is influenced by the *free labor* ideology proclaimed by Republicans. In few words, *free labor* means the shift from property ownership to ownership of the fruits of one's own labor as the fundament of republican liberty. This concept was summarized by Lincoln in 1859, in Wisconsin, where he defended that there should not be an opposition between labor and education, and that agricultural labor was the pivotal ingredient of the "cultivated thought" that allows for individual freedom². Sending the freed slaves to Florida would give them the opportunity to "develop whatever capacities they possess for improvement and self-government", once liberated from the competition with the whites (*NYTrib*, 12/05/1861). Internal colonization was simultaneously separating the races, providing for loyalist ports in the South (if the colony was to be built there), and including the blacks within the logic of *free labor* that motivated northern Republicans.

The *free labor* ideology that animated Republican discourse against slavery fitted well with the confiscation of this specific form of property that was also a form of labor. The solution presented by one Republican senator was to confiscate rebel property to compensate loyal property, that is, both freed and enslaved persons treated under rights of property provisions (*NYTrib*, 12/04/1861). However, once this property is forfeited to the Union, its labor capacity becomes the justification for its usage by the Union. The *Tribune* criticized in December 1861 the fact that prisons in were filled with "runaway negroes" who only asked for "the chance to work." Insisting on the *labor* argument, the *Tribune* showed that many "contrabands" preferred to return to their masters than to "accumulate" in "horrid jails" (*NYTrib*, 12/05/1861). Into 1862, the controversy in the *Tribune* moved away from the

² Lincoln, Address before the Wisconsin State Agricultural Society (1859). Available at <<http://www.abrahamlincolnonline.org/lincoln/speeches/fair.htm>>

constitutional validity of confiscating human property to the employment of this property. Northern men, to Republicans, were free due to their ability to sustain themselves, while the Southern notion of liberty was grounded on owning property that (ideally) could labor *for oneself*³. As the war proved longer than most northerners believed, necessity arguments sharing this same vocabulary emerged more frequently. Even moderate (non-abolitionist) Republican congressmen supported bills that authorized abolition by the army, "if the necessity existed⁴." Among the radicals, the proposals went one step further, to "whenever it is intimated that by any possibility of necessity the people [...] may choose to arm a regiment of her black citizens [...] in benefit of the best [...] Government that the world ever saw⁵." After all, in the language of Senator Trumbull (R-Illinois), labor "contracts" were stronger than slavery contracts. If government can draft a free laborer, "at the expense of his hirer," than it may also draft a slave⁶. Liberation from property, or permission to perform a duty of citizenship, would be given to black men on the basis of necessity, but justified by the Republican Party's *free labor* language. Colonization was still a condition of this debate, but seen as a post-war solution to the presence of unwanted groups within white communities.

Free labor thus is divided between two different sets of motivations. It is motivating anti-slavery through the confiscation of that rebel property capable of laboring, and it is also motivating the use of this property, now free. This passage is significant because it strips the property qualification of the black man, humanizing him (no longer *it*), and including him in a position where the debate shifts from the justice of emancipation (or rights of men versus rights of property), to the condition of a free(d)men (full or second class citizenship, or who is *we the people*). In the colonization debates, the emphasis is on the possibility that *free labor* will allow for black self-improving. Yet, it is placed as a form of avoiding the waste of a gigantic loyal labor force. While "the Federal Government has no constitutional [...] power to hold slaves, [...] nor to exact service from any one without rendering him an equivalent, [it may use] voluntary labor of the slaves of rebels, like any other property forfeited by treason" (*NYTrib*, 05/12/1861). However, how is this property to be used?

³ This description is based on Lincoln's account of the *mud-sill* theory, exposed by South Carolina Senator James Hammond. Lincoln, Address at the Wisconsin Agricultural Society (1859).

⁴ *Congressional Globe*, 37th Congress, 1st Session, p.186 (07/18/1861)

⁵ *Congressional Globe*, 37th, 1st, p.264 (07/25/1861)

⁶ *Congressional Globe*, 37th, 2nd, p.944 (02/25/1862)

Some more conservative groups could accept freed blacks executing "public service," but placing blacks in the ultimate symbol of free citizenship, as soldiers, was by late 1861 still a radical idea (*NYTrib* quoting *New York Herald*, 12/04/1861). The language of human property explains the repulse to black soldiers. A slave is not seen as capable of independent thought, as the *Tribune* warned when reporting on slaves who decided to fight for their masters. Two different responses were given to this puzzle (of how to justify arming freedmen). First, a pragmatic argument; it contraband could be used for public service, why shouldn't it be used for other services, in the battlefield? Since slaves had been "partisans of the Union" from the beginning, as information sources (*NYTrib*, 04/19/1862), they were already playing a military role.

Second, and perhaps most interesting, a citizenship argument was also mobilized. How could the Union accept that rebels raised arms against it, and disallow loyal men to fight back, especially since these men had direct interest in the results of the conflict? According to Gerrit Smith, even "the loyalty of a Garrisonian Abolitionist may be suspected, but that of the negro never" (*NYTrib*, 03/04/1862). What is worth noting in this form of argument is the displacement of both groups. Neither rebels nor blacks belong in the *we the people*, but while the former is treated as Americans, the latter is excluded from the very possibility of helping in this victory. The language here has an aspect of social contract to it. As Frederick Douglass said in a published address, "I am an American citizen [...]. But I am not only a citizen by birth and lineage, I am such by choice" (*NYTrib*, 02/13/1862). White southerners chose the opposite. The picture of the traitor has a racial element to it, since blacks could not be traitors to a nation they did not belong.

The risk of defending the use of black labor in the war, notably as military labor, was doubly sharpened. As previously stated, it sounded as a threat to the racist — *ascriptivist* — ideal most northerners had of the meaning of *we the people*. Arming former slaves meant equating them with whites, at least in the battlefield. Second, once armed and dignified as soldiers, colonization plans would no longer be thought as plausible. In effect, one pivotal element of the emancipation argument, i.e. that blacks would leave the country to more suitable climates after abolition, would lose its strength. The recognition of black humanity that came with the renewal defenses of abolition and the recruit of black soldiers posed a challenge to the more

conservative positioning of northern public opinion, and also to the legal establishment drawn from the *Dred Scott*⁷ decision of five years earlier. Besides the Declaration of Independence, which had been part of the abolitionist arsenal for decades, the rebellion of "strict constitutionalists"⁸ transferred the Constitutional rhetoric to the cause of emancipation.

The slave's right to his freedom, wrote one Republican radical, was an "inherent right — [it is] his birthright, on the simple ground of his humanity, and that the requirements of Christianity, no less than the theoretic principles of our Government, under the Constitution." To *free labor* men, of course, this equality is related to "life, liberty, and the fruits of an honest toil" (*NYTrib*, 06/13/1862). When recognizing African-Americans' claim to a certain level of equality, which could justify their emancipation, and employment in the war effort, the *Tribune* usually qualified that the debate was not "whether the negro is capable of the highest civilization," or if he had any physical "inferiority of superiority" (*NYTrib*, 11/18 and 06/13/1862). Black inferiority should not be seen as a natural condition, but as a consequence of slavery. As early as January 1862, a Republican congressman claimed it was time to "strike the chains from four millions of human beings, and create them MEN⁹." The increasing presence of this form of humanization discourse is a condition for the growing acceptance, even if restricted to Republican circles, of emancipation and recruitment. Freedom makes African-Americans men, and allows them to fight for their own cause, which coincides with the Union cause. When the final Emancipation Proclamation was announced, in January 1st 1863, it included the clause (already put in practice by some generals) "that such persons of suitable condition will be received into the armed service of the United States," to the celebration of the *Tribune* editors (*NYTrib*, 01/01/1863). By the fall of 1862, the Proclamation's both goals were still seen as too radical by many in the North. The transformation of the war into a war of abolition was successfully used by Democrats to achieve important victories in that year's elections (McPherson 1988, 493). Despite

⁷ Dred Scott was a slave who sued his owner for his liberty after residing in free territory. In 1857, the Supreme Court ruled that as a slave, and as a black man, he did not enjoy the right to sue under the Constitution, and that the territories could not limit slavery, under the protection of the rights of property. Also, Chief Justice Taney's opinion limited US citizenship to whites only, in reference to those who signed the Constitution.

⁸ An example of the use of strict constitutionalism by southern proslavery apologists is Albert Bledsoe (2011[1860], 341)

⁹ *Congressional Globe*, 37th, 2nd, p. 441 (01/22/1862).

Republicans' efforts to claim the Constitution as an emancipationist document, the Democratic slogan of "Constitution as it is, the Union as it was," simultaneously pro-slavery and pro-Union, had positive effects in its campaign. Elevation of the black man from slavery to freedom, and from freedom to soldier, was justified above all by military necessity, not by a will to necessarily turn black man into citizens (McPherson 1988, 564). However, the more Republicans identified the war with the black man's cause, the stronger became their association of pro-slavery with treason, which would be a backlash for the Democratic electoral future in the 1863 and 1864 contests. Our argument here is not that northern public opinion agreed with the radicals' push of agendas, but rather that the radicals were capable of bringing, slow and unsteadily, their discourse from extremity into the center of the debate.

Black inclusion in the military, combined with the emancipation policy, generated strong reactions from more conservative segments in the North. Most famously, the riots in New York City in July 1863 were used by Republicans as an evidence of the association between Democrats and Confederates. One important discursive element of the riots reports is the use of "refugees" to identify blacks who escaped the mob. Since these were freemen, "contraband" was not a precise definition. According to the *Tribune*, as rioters "threatened to liberate rebel prisoners [and] hunted negroes," black refugees demonstrated "no spirit of vindictiveness" and "made themselves useful," working at the police station where they sought refuge (*NYTrib*, 07/16 and 07/21/1863). Few days after the riot, the 54th Massachusetts Regiment, composed of black recruits, led an attack over a Charleston fort. Despite being driven back by the Confederates, the black soldiers' effort was celebrated by the Republican press. Describing a previous battle in which black troops were mobilized, the *Tribune* praised the "negroes" for, after being "disarmed, [...] defending themselves [using] the weapons of *savage humanity*." Asking that "All honor [should be given] to our brave colored soldiers," the *Tribune* compared the risks former slaves were willing to take to fight an enemy they shared no "*sympathies*" with (*NYTrib*, 07/14/1863). Two years earlier, when defending the contraband of war policy, the fact that blacks were property helped the rhetorical defense of *confiscation*. Now, their association with *savageness* enhanced the perception of their ability to help the Union army, though it was certainly a barrier for their future integration within the American polity. While some said they wouldn't "fight for the negro," Lincoln insisted, some of

them were "willing to fight for you" (*NYTrib*, 09/03/1863). The problem of recruiting blacks, however, was not simply a matter of racism, but also of what Jason Frank calls "political subjectivization" (Frank 2010, 30). The concept refers to the concrete forms in which the people exercise its "self-enacting power" (*idem*). Being in the army, and fighting to preserve the "Union as it was" was a form of enacting one idea of an (white) American people. Recruiting blacks was a sign of lack of "faith in the ability of the white men of the North to crush out this rebellion¹⁰," or, a distrust in the American people to defend its own Union. Answering to this critique, Republican representative William Dunn (R-Indiana) exposed our argument relating the American identity not to race, but to loyalty (or, social contract), though evidently limited by racial elements: "I do not advocate putting white men under black officers. Nobody else does or ever did. But, as God is my judge, *I would rather follow the black man than a slaveholder as an officer*¹¹." Notwithstanding the still accepted inferiority of blacks, and their incomplete belonging within the *we the people*, their position in 1863 is at least equivalent to those who despised the constitutional compact. As Jason Frank states quoting Jeremy Waldron, the moments of political enactment of the people "resemble not so much 'the triumph of preemptive rationality' as 'the artificially sustained ascendancy of one view in the polity over other views whilst the complex moral issues between them remain unresolved'" (Frank 2010, 30). Republicans, remarkably radicals, were, in their acts of speech, formulating that third *people* we introduced on page 5. A people neither equivalent to the pre-war northern imaginary nor that same people *plus* the freedmen/soldiers, but a people related to a "political identity¹²." This inclusive movement in Republican discourse was certainly broader than most Republicans' own policy preferences, though. In liberated Louisiana, the regulation of contraband labor did not differ greatly from bondage labor as experienced by the freedmen until months earlier. Paternalism and distrust over the black men's will to labor for wages justified a system of mandatory attachment to the sugar and cotton plantations, owned by former masters who took an oath of allegiance to the Union (McPherson 1988, 711). Also, as reported in the *Tribune*, black soldiers needed white officers to lead them, and very few volunteered for this task (*NYTrib*, 07/30/1863).

¹⁰ *Congressional Globe*, 37th, 3rd, p.604 (01/29/1863)

¹¹ *Congressional Globe*, 37th, 3rd, p.604 (01/29/1863)

¹² I take the term from Ackerman 1998, 181

It was in this context of comparison between black loyalty and white rebellion that the system of oaths of allegiance begun to be implemented. Despite including the respect to the presidential proclamations over slavery, the oaths could be read as limitations to individual liberty (in contradiction thus to emancipationist language). Contrary to the language of Lincoln's first inaugural, the oaths were not an appeal to the "better angels of our nature," nor to the "mystic chords of memory" that united whites North and South of the Mason-Dixon line. Their appeal was also to Ackerman's "political identity" of the American people. In some ways, we can interpret how blacks conquered their space — or at least the promise of it — within *the people*, while former Confederates had to ask for readmission. Unsurprisingly, the oaths generated grievances among conservatives. As one Democrat stated, the oaths were an attack on the white man's "citizenship rights," chiefly for not only demanding allegiance to the Constitution, but also "to support the negro policy of the President and his proclamations on that subject. [...] This proclamation and the oath elevate the negro above the white man¹³." The changes in the social contract implied in the new language used to relate to the black man, and the new position he occupies in the social order, are not seen as simply inclusion of new signers, but as the formulation of a new contract. In a previously quoted letter, Secretary of State William Seward manifested that the freedmen's future was to be decided by the "will of the people," the same will that had already decided over slavery in the territories, in the District of Columbia, and the perennial liberty of war fugitives of slavery¹⁴. The exercise of enacting who is *the people* by democratic voice, instead of judicial decision made the Constitution a less fixed document, by definition. Discussing popular constitutionalism (mainly in the Early Republic), Larry D. Kramer argues that

"[the founders'] Constitution remained, fundamentally, an act of popular will: the people's charter, made by the people. And, as we shall see, it was "the people themselves"—working through and responding to their agents in the government—who were responsible for seeing that it was properly interpreted and implemented. The idea of turning this responsibility over to judges was simply unthinkable" (Kramer 2004, 7).

The deconstruction of the natural condition of property of blacks, and the increasing preeminence of discourses of their equal humanity, combined with the grievance over the proslavery rebellion, and the intention of excluding confederates

¹³ *Congressional Globe*, 38th, 1st, p. 66 (03/04/1864)

¹⁴ *The Works of William H. Seward*, Vol. 5, p. 336-7 (07/21/1862)

from the reconstructed South, led to a rhetorical condition that allowed for some of the changes the following years would bring. The armed colored troops, now freed, placed a challenge over Republicans as to what is the extent of their freedom. Recognizing emancipation as the final obstacle to liberty, moderates and conservatives questioned the need and validity of the Reconstruction Acts proposed by radicals, expressly the creation of the Freedmen's Bureau.

From emancipation to suffrage: The Bureau and the meaning of citizenship in *free labor ideology*

"To be a man in the context of nineteenth-century American society meant exercising manly privileges like voting, but it also meant asserting one's rights and protecting one's family and community. As Frederick Douglass remembered it, physically preventing a slave breaker from whipping him was the symbolic achievement of his manhood" (Horton *et al* 1997, 244).

Black participation in the war, in the Union military or as runaway slaves from Confederate territories, had two impacts in their perception within the American polity. First, as described in the previous section, it created a Union-identity that divided not between Anglo-Saxons Protestants and *others*, but between loyalists and traitors. The inclusion was not perfect, as abolition only began to be explicitly stated as a war goal, and the freedmen's future was not consensual among northern elites. However, as argues Horton *et al* (1997) on the effects of black participation in the revolutionary war, military activity enhanced a self-image of belonging within the black community, which aided bottom-up efforts of citizenship inclusion (on black agency in Reconstruction, see Foner 1989, chap. 3; Valelly 2003, chap. 3). Both of these developments changed the terms of the debate over the place of African-Americans. In 1864, the contest over emancipation, for example, was expanded from military necessity (which reduced it to rebel areas), to the prospect of a Constitutional Amendment. This possibility, combined with recognition of citizen status to black soldiers and their families, resulted in a strong reaction by northern Democrats congressmen and media.

In a display of the shift in the thought of abolition from the beginning of the conflict, the *Tribune* urged Congress to approve a bill creating the Freedmen's Bureau, stating it "ought to have preceded the Emancipation Proclamation, to have smoothed for the slaves their difficult and uncertain path to Freedom." The concern with the "path to Freedom" also encompassed the ideal of equal pay within the army.

What is noticeable in the *Tribune's* argument is the mixture of senses of justice (mentioning the "revolt" that unequal pay caused in the public), and of *free labor* (for denying a fair pay would discourage "future enlistments" by blacks, in their condition of free to choose their labor) (*NYTrib*, 05/12/1864). An article by The Women's National League published in May 1864 claimed for the Amendment to "ring the death knell of caste and class throughout the land," which should be followed by an effort of education of the liberated slaves, so as to teach them in the "a, b, c of human rights" (*NYTrib*, 05/28/1864). This article sheds lights over some of the topics discussed in this paper. Contrary to those defined as "old abolitionists" of the *antebellum* period, the League (and the *Tribune* by publishing it) defends emancipation as only the first, and not the final, step towards freedom. The "higher work of Reconstruction," and the "foundations of a TRUE REPUBLIC" depended on guaranteeing the enfranchisement of "citizens who are taxed, or who bear arms to support the Government" (*idem*). The attack on *old abolitionism* was a conscious attempt to bring the debate to a more radical arena than most northern States allowed before the war. The radicalism of these proposals was pointed out by Democrats, who reminded Republicans that New York denied universal suffrage in a referendum, and Illinois denied "that the negro should [...] set his foot upon her soil." To defend black suffrage was to take away the "privilege" of *the people* to define who belongs or not to the community¹⁵. Criticism to the expansion of the war aims (from Union to abolition, to some form of equality) was not restricted to Democrats. In a movement towards moderation (he had been denied the Republican nomination in 1860 due to the image of radical¹⁶), William Seward complained that some Republicans were not "here to rejoice" over the fall of Atlanta in one of the most important Union victories, "because this war for the life of the nation is not in all respects conducted according to their own peculiar racial ideas and theories¹⁷." Radicalism was not abolition, since Seward a few months later would defend it as one of the goals of the war, and the one that, once fulfilled, eliminated "the only element of discord among the American people¹⁸."

To the fear of more conservative groups, Republicans in Congress disagreed with Seward, and defended measures that leveraged the condition of African-

¹⁵ *Congressional Globe*, 38th, 1st, p. 2248 (05/12/1864).

¹⁶ For an account of the Republican 1860 nomination, see McPherson 1988, 216-20.

¹⁷ *The Works of William H. Seward*, Vol. 5, p. 493 (09/03/1864)

¹⁸ *The Works of William H. Seward*, Vol. 5, p. 514 (11/10/1864)

Americans beyond emancipation. In a response to arguments usually expressed by southerners to justify both slavery and suffrage restrictions of poor whites, a Republican representative contended "the lesson taught by this rebellion of the slaveholding aristocracy is not distrust of the unprivileged many, but the privileged few"¹⁹. In this sense, efforts to improve the status of freed blacks were simultaneously related to a particular notion of freedom held by the radicals, and a punishment to the "privileged few" who embedded aristocratic claims within the republic.

As Republican *free labor* ideology occupied the center of the dispute, the question was "how much *help* should be given blacks" in their new condition. Remembering that *free labor* is characterized by the notion of a laborer who "labors for wages awhile, saves a surplus [...] for himself," eventually being able to hire a helper²⁰, the pressure on the newly freedmen was over how to be incorporated into this model. Land and the "ballot power" were ways of "letting they take care of themselves" from then on²¹. Many Republicans could agree to the first part of this proposal, for homesteads would transform the South into the northern self-image of small landowners, and end the monopoly of large planters in the region. Suffrage was another story, despite the compelling argument of it being a way to avoid further federal intervention in black men's lives. Suffrage would give black men citizenship privileges not enjoyed by white women, and make white congressmen "their representatives, and not their masters," as stated one Democrat²². The *Tribune* questioned if political rights were not already given with emancipation. After transforming "things into men," the nation gave them freedom "To have and To Hold, for and during the period of their natural lives," which evidently included suffrage. Once free, they forfeited their status of property, to become property owners — we might wonder if the *Tribune* here defends self-ownership as a sufficient measure of citizenship. As property owners, they were taxed, which justified electoral rights (*NYTrib*, 06/28/1865). Considering that property was such a critical element of citizenship in the nineteenth century, the Freedmen's Bureau attribution of aiding land purchases and leases became a central component of the controversy.

¹⁹ *Congressional Globe*, 38th, 1st, p. 2244 (05/12/1864).

²⁰ Lincoln, Address before the Wisconsin State Agricultural Society (1859). Available at <<http://www.abrahamlincolnonline.org/lincoln/speeches/fair.htm>>

²¹ *Congressional Globe*, 38th, 1st, p. 2251 (05/12/1864)

²² *Congressional Globe*, 38th, 1st, p. 2244 (05/12/1864)

Influenced by ideals both of land redistribution and education of freedmen, exposed in abolitionist and radical speeches, the Bureau was organized to "prevent suffering, regulate labor, and introduce and sustain schools," focusing in settling the "important question of labor." All land that could not be claimed by those who could prove "constant loyalty" should be treated as abandoned, and leased or sold to freedmen, and "retained until the growing crops were gathered." The ideal of the citizen-soldier, which is in the root of blacks new status by the end of the war, was also present in the Bureau attributions. All can choose work, "but the young and able bodied negroes must be encouraged to enlist as soldiers in the service of the US, to contribute their share toward [...] their own freedom" (*NYTrib*, 12/21/1865). Though only indirectly related to voting rights, the incentive for military service relates well to the moderate claim that African-Americans should "take care of themselves." Despite the insistence on the Bureau's temporary aspect, some Republicans did question its very necessity. "When a man can vote, he needs no special legislation in his behalf. The Freedmen's Department, [...] uncoupled with the rights and privileges of free men for the colored men [will equate them to Indians]²³." It is hard to place Senator Sprague's (R-Rhode Island) argument into a more radical or more moderate positioning. While defending that freedmen should not be given any economic or social support, just as Democrats did, he is nevertheless standing up for equal political rights, a much more taboo matter in the context, which exemplifies the new ground the debate was conducted. The Democratic stance of the issue of the Bureau is summarized by a Senator from Delaware, "hundreds of thousands of the negro race have been supported out of the Treasury [...], and the white *people* of this country are taxed to pay for that expense." People being taxed to support those who are "too lazy and too worthless to support themselves." Interestingly, it is accepted that "Slavery having been abolished, those who were formerly slaves *were now citizens*, [though] we had no more authority to provide homes for black then for white citizens" (*NYTrib*, 01/24/1866). As even Democrats accepted the new condition of citizenship, and even used a *free labor* argument against the Bureau ("too lazy"), radicals needed to bring claims of justice that combined the need to upheave the southern social order. Instead of the laziness of blacks, who "for weary generations have fertilized these

²³ *Congressional Globe*, 38th, 2nd, p.960 (02/21/1865)

lands with their sweat²⁴," the *people* should ask if southern whites would ever become "accustomed to help themselves" (*NYTrib*, 05/16/1862).

Both groups saw a revolution in the new status of blacks. To Democrats and moderate Republicans, the Thirteenth Amendment was all the "negroes ought to contented with²⁵." The insistence on more rights was an "imposition of Congress" over the "the perfect harmony" recently conquered between the States. Early in 1866, William Seward defended President Johnson's policies for limiting the scope and duration of the Bureau, since with the abolition of slavery no more change was necessary²⁶. The Bureau's activities, and the agency of freedmen, on the other hand, enhanced the *free labor* discourse of freedom as self-ownership. As a report on Tennessee's freedmen situation stated, areas with strong presence of the Bureau presented a decreasing number of "negro dependents. [...] That last fact may make us blush, not for the negro, but for ourselves" (*NYTrib*, 09/09/1865). With conservatives in the minority, the dispute over abolition became a dispute over the extent of federal government leveraging for black *free labor*. Freedom was not possible "when the neighboring possessors of property, power and intelligence, are nearly all hostile" (*NYTrib*, 01/31/1866). Ultimately, these radicals aimed at a new social order in the South. The revolution narrative told by the radicals was a positive characterization of the enactment of a new *we the people*, though, as we will discuss below, radicals were more compelled to see this revolution happening in the South only. To these Republicans, the Bureau served as an education institution to both freedmen and former masters, teaching their new status as equals. Even though "tens of thousands" of freedmen started working for wages, it was necessary to planters to understand that "leaving the employment" of old masters was a way of demonstrating the recently acquired liberty²⁷, and not a matter of vagrancy.

President Johnson, and his coalition of moderate and conservatives, thought emancipation was sufficient to end hostilities between the two sections, and that African-Americans had no claim to either suffrage or economic aid. The bare defense of black suffrage only demonstrated ignorance "of the actual condition of the black race, or else reckless[ness over] the effect it is likely to produce²⁸." Their critique of

²⁴ *Congressional Globe*, 38th, 2nd, p. 961 (02/22/1865)

²⁵ *Congressional Globe*, 39th, 1st, p. 203 (01/11/1866)

²⁶ *The Works of William H. Seward*, Vol. 5, p. 533-4 (02/22/1866)

²⁷ *Congressional Globe*, 39th, 1st, p. 340 (01/22/1866)

²⁸ *Congressional Globe*, 39th, 1st, p. 240 (01/15/1866)

radicals, besides the tone of obstruction to reconciliation presented in Seward's speech quoted above, emphasized the unanticipated effects of their policies. While advocating for black improvement, radicals were risking "to create a power which will forever rule and control this country²⁹." The text of the President Johnson's veto message for the Bureau Bill illustrates the apprehension the equality implied in the bill generated among more conservative crowds, "[...] the bill subjects any white person who may be charged [...] to imprisonment [...], without defining the civil rights and immunities which are [...] secured to the freedmen" (Freedmen's Bureau veto message, 1866³⁰).

Despite the explicit reference to "rights and immunities belonging to white persons," President Johnson felt the freedmen's rights should be defined, as they probably should not be the same as white men's. Conservatives considered emancipation sufficient. Conservative discourse by the end of the war emphasized the fear of miscegenation as a consequence of blacks' new status as one of the greatest threats of the post-war situation. In the 1864 election, the prevalence of "revolution instead of union" on Republican discourse, with "no law preventing the marriage of the two races³¹," combined with abolitionists explicit defenses of miscegenation³², served as powerful campaign strategies for Democrat candidates.

Northern official discourses, as presented in Congress and newspapers, then, were divided in similar groups (of radicals, moderates, and conservatives) as in the beginning of the war. The meaning of these different positions might have changed, in directions the actors did not anticipate. Similarly to the fate of Reconstruction when northern public opinion was no longer eager to punish southerners to improve the life of blacks, the institutional gains in terms of citizenship were restricted by the limitation of change in the conceptual idea of a *racialized* American identity.

²⁹ *Congressional Globe*, 38th, 2nd, p. 194 (01/10/1865)

³⁰ Available at <<http://teachingamericanhistory.org/library/document/veto-of-the-freedmens-bureau-bill/>>

³¹ *Congressional Globe*, 38th, 1st, p. 3377 (07/01/1864)

³² *Congressional Globe*, 38th, 2nd, p. 194 (01/10/1865)

Conclusion: Popular Constitutionalism and Shared Understanding of Authority



Theodor Kaufmann (1867), *On to Liberty*.

While Wood's paintings from 1866 depicted the changing image the Civil War formulated of black men, as they escape bondage, joined the army, and eventually were, in his view, incorporate as citizens due to their services, Theodor Kaufmann's *On to Liberty* allows us a different narrative. First of all, we notice only women and children (perhaps teenagers) among the freed slaves. This gives room to two readings. Maybe male adults were in the Union army. Or, as many conservatives claimed in denying blacks suffrage, the liberated African-Americans were in a situation similar to children and women — unprepared for the freedom they were being offered. In the first years after the war, Andrew Johnson offered a thorough policy of pardons to former confederates, so they could re-join the American polity. Freed slaves, on the other hand, faced, as depicted in Kaufmann's painting, a long and uncertain road towards belonging to the Union, under the American flag hidden behind some fog on the top right corner. Also, their starting point, expressed by several Republicans on the debates narrated above, and more precisely on the painting, is a savage state of darkness. Wood's portraits of the contraband turned veteran had an optimistic view of the future of African-Americans and their new conditions. Kaufmann seems to express concern over the success radicals, and black advocates, would achieve. Much as the former presumed the re-enactment of a third people, formed from the experience of battle, and its effects on black (self-)perception of manhood, following arguments exposed by Frederick Douglass and other abolitionists, the latter viewed how white America was still a distant dream, not necessarily reachable, to the newly liberated slaves.

Frederick Douglass was one of the strongest advocates of black enlistment during the war, and of abolition as both a mean to victory, and as an end to be pursued. Yet he understood the limitation he faced, as he recognized in 1864, that "the people hate and despise the only measure that can save the country." What he sought in this speech to the Women's Loyal League was to defend an idea of unity, related to what I have called *third people*. A new unity, among loyalists — black and white — was the only possible solution to the dilemma of abolition to save a racist Union. This new unity, based not on previous attachments or ancestry, but on a devotion to principles of justice formulated on the Declaration of Independence, "in which the obligations of patriotism shall not conflict with fidelity to justice and Liberty³³." I agree with Frank (2010) that the act of speech, and the choice of the first person — *we* — by Douglass, is a radical democratic form of enabling a different people, playing a political part in the definition of who is behind the enactment of those sacred founding documents. Douglass, in this 1864 address, recognized that a "nation is not born in one day," or that his efforts, and that of the radical Republicans, to change the perception white America would have of black men, were showing partial returns (in the recognition of black *personhood*, emancipation, military recruitment, and, at the time of the speech, debate over a Freedmen's Bureau). However, despite the inclusive contents of black abolitionists discourses, white radicals and conservatives were still not supporting their effort of self-enactment as one single American people. While conservatives maintained their claims to property rights and racial inferiority when discussing black men's future, white abolitionists would tell Douglass to just "give us the facts, we sill take care of the philosophy" (quoted in Frank 2010, 230). Or, when reporting an abolitionist meeting still early in the war, the *Tribune* would print long speeches by Garrison and Wendell Philips, but only state the presence of a runaway slave, without the content of his address (*NYTrib*, 05/07/1862). These acts of speech, or of silence, denounced the incorporated notions of "proper roles" for blacks, as no more than a supporting role in their own struggle for liberty, *and belonging*.

Again, Douglass seems to understand the importance of the sociological image of blacks to the possibility of realization of his egalitarian goals:

³³ *Frederick Douglass: Selected Speeches and Writings*, p. 557 (01/13/1864)

"While a respectable colored man or woman can be kicked out of the commonest street car in New York where any white ruffian may ride unquestioned — we are in danger of a compromise with Slavery³⁴."

This description of the impossibility of actual freedom, in a black man's point of view — which includes being *we the people*, and not simple emancipation — while even the North is still racist poses a problem to popular constitutionalist accounts such as presented by Ackerman (1998), Kramer (2004), and even Frank (2010, though Frank is less concerned with constitutional history than with a democratic dispute over a people who is constantly self-enacting), and their relation to human rights. If there is an appeal to *the people* in moments of *higher lawmaking*, or in Supreme Court reasonings, or even if the realization of *the people* depends on its capability of *self-realization*, then the possibility of inclusion will be always dependent on sociological "proper place" of the excluded. Rogers Smith (1997) notes this limitation, calling it the *ascriptive* tradition. My goal was to separate *ascriptive* discourses from citizenship laws and statutes, giving Smith's argument less circularity. However, besides finding *ascriptive* aspects throughout the period analyzed on both conservatives and radicals' speeches, we can identify a limitation to the *liberal* aspects of the radicals' discourse, which is to under-consider the sociological reality they were trying to alter. Assuming a *natural* equality of men (black and white, though with the incompleteness of this equality, as noticed above), abolitionists and radicals alike underestimated the strength of the *constructed* inequalities, both material, due to centuries of bondage, and ideological, due to the pervasiveness of white supremacy.

Albeit inserting his debates in another political moment, a passage of political theorist John H. Schaar's positive reading of Winthrop theology helps up understand the limitation to liberal thought, "Magistrates have no license to set their views above the common understanding of the community. Authority is public, communal, the product of shared agreements and convictions" (Schaar 1991, 498). Independently of how the language used to refer to blacks developed during the war, radicals would still have to deal with a public with a persistent understanding of authority with no room to racial equality. Despite all advances brought by the war, African-Americans never left the position of *they* in white official discourse. Their place of *other* did not allowed for a *civic ideal* based on consent, but rather of

³⁴ Frederick Douglass: *Selected Speeches and Writings*, p. 565 (01/13/1864)

subjugation. Without breaking the barrier of *we the people*, black inclusion would persist restricted to a radical placement within the political debate.

References

Printed Primary Sources

- Bledsoe, Albert Taylor. 2011[1860]. "Liberty and Slavery: Or, Slavery in the Light of Moral and Political Philosophy." In *Cotton Is King, and Proslavery Arguments*, ed. E. N. Elliott. Oxford: Benediction Classics, 230–70.
- Douglass, Frederick. 1999. *Frederick Douglass: Selected Speeches and Writings*. ed. Philip S. Foner. Chicago: Lawrence Hill Books.
- Lincoln, Abraham. 1953. *The Collected Works of Abraham Lincoln (8 Volumes)*. ed. Roy P. Basler. New Brunswick: Rutgers University Press. <http://quod.lib.umich.edu/l/lincoln/>.
- Seward, William H. 1884. *The Works of William H. Seward (5 Volumes)*. ed. George E. Baker. Cambridge: The Riverside Press.

Secondary Sources

- Ackerman, Bruce. 1998. *We the People: Transformations*. Cambridge: Harvard University Press.
- Bensel, Richard Franklin. 1990. *Yankee Leviathan: The Origins of Central State Authority in America, 1859-1877*. Cambridge: Cambridge University Press.
- Foner, Eric. 1989. *Reconstruction: America's Unfinished Reconstruction (1863-1877)*. New York: Perennial Library.
- Frank, Jason. 2010. *Constituent Moments: Enacting the People in Postrevolutionary America*. Durham: Duke University Press.
- Gerring, John. 2003. "APD from a Methodological Point of View." *Studies in American Political Development* 17(01): 82–102.
- Gienapp, Willian E. 1987. *The Origins of the Republican Party (1852-1856)*. New York, Oxford: Oxford University Press.
- Horton, James O. and Horton, L. 1997. *In Hope Of Liberty*. Oxford: Oxford University Press.
- Kramer, Larry D. 2004. *The People Themselves: Popular Constitutionalism and Judicial Review*. Oxford: Oxford University Press.
- McPherson, James. 1988. *The Battle Cry for Freedom: The Civil War Era*. Oxford: Oxford University Press.
- Oakes, James. 2007. *The Radical and the Republican. Frederick Douglas, Abraham Lincoln and the Triumph of Antislavery Politics*. New York: W. W. Norton & Company.
- Rana, Aziz. 2010. *The Two Faces of American Freedom*. Cambridge, London: Harvard University Press.
- Schaar, John H. 1991. "Liberty/Authority/Community in the Political Thought of John Winthrop." *Political Theory* 19(4): 493–518.

- Smith, Rogers M. 1997. *Civic Ideals: Conflicting Visions of Citizenship in U.S. History*. New Haven: Yale University Press.
- Valelly, Richard M. 2003. *The Two Reconstructions: The Struggle for Black Enfranchisement*. Chicago: University of Chicago Press.
- Vorenberg, Michael. 2001. *The Final Freedom: The Civil War, the Abolition of Slavery, and the Thirteenth Amendment*. Cambridge: Cambridge University Press
- Welke, Barbara Young. 2010. *Law and Borders of Belonging in the Long Nineteenth Century United States*. New York: Cambridge University Press.