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The Spectrum of Black Freedom in the Age of Slavery

Free Black Citizenship and the Development of Civic, Racial, and Hybrid Democracies in Antebellum America

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Abstract

This article proposes new ways of thinking about and conceptualizing the influence of Black freedom on the development of citizenship and democracy in the United States between 1783 and 1861. Moving away from overgeneralized national narratives, it explores the *spectrum* of citizenship and democracy that developed in various states during the era of slavery. This study adopts a comparative perspective and advances a new conceptual framework that is potentially applicable to other post-revolutionary Atlantic societies, arguing that US states essentially developed in the direction of *civic democracies* (where free Blacks were considered full citizens), *racial democracies* (where free Blacks were considered non-citizens), or *hybrid democracies* (where free Blacks were considered second-class citizens), respectively, depending on how local communities understood and experienced Black freedom. It also briefly considers the ways in which free Black populations navigated, resisted, and helped shape local landscapes of citizenship and democracy across antebellum America.

Keywords

free Black population – emancipation – freedom – slavery – citizenship – democracy – United States

1 Introduction

On 11 March 1857, just four years before the outbreak of the Civil War that would definitively destroy slavery in the United States, the *Daily Dispatch* of Richmond, Virginia, ran a long-awaited and extensive abstract of the recently decided Supreme Court decision *Dred Scott v. Sanford*, which unequivocally denied federal citizenship rights to Black Americans and declared that Black people had never had any constitutional “rights which a white man was bound to respect.”¹ The abstract summarized in laymen’s terms the main arguments and findings of the case for the general public. The Court’s decision—one closely followed in Virginia and throughout the country—devoted considerable ink to highlighting the difference between *federal* citizenship and *state* citizenship, the central issue around which the case revolved. “The question is simply this,” the Court explained. “Can a negro—whose ancestors were imported and sold as slaves, become a member of the political community formed and brought about by the constitution of the United States, and, as such, become entitled to all the rights and immunities of a citizen ...?” This was a question that, at the time, various states answered differently. At the federal level, the Court pointed out, “every law of naturalization confines citizenship to white persons,” and the laws that governed citizenship under both the Articles of Confederation and the US Constitution “certainly excluded the African race,” whether slave or free. At the state level, however, the Court recognized that individual states “may confer the right [of citizenship] upon an alien or on any other class or descriptions of persons who would to all intents and purposes, be a citizen of the State,” although “not a citizen in the sense used in the constitution of the United States.” According to the Court’s interpretation of the Constitution, such rights were strictly “confined to the boundaries of a State.” Referring specifically to free Blacks, whether they resided in the northern free states or the southern slave states, the abstract underscored that even if some states decided to confer upon them certain citizenship *rights*, that did not make them federal citizens in the constitutional sense, arguing that “it does not follow that a man, being a citizen of one State, must be recognized as such by every State in the Union. He may be a citizen in one State, but not recognized as such in another.” In the end, the Court determined that the Constitution afforded no federal citizenship rights to African Americans, Chief Justice Roger Taney declaring that they were “not to be included ... under the word ‘citizens’ in the

1 *Dred Scott v. Sanford*, 60 US 393 (1857), US Supreme Court (<https://supreme.justia.com/cases/federal/us/60/393/>).

Constitution, and can therefore claim none of the rights and privileges which that instrument provides for and secures to citizens of the United States.” Any rights granted to free Black populations at the state level need not be respected or upheld by any other jurisdiction—free Black people throughout the US were to be considered non-citizens, non-members of the political community, and ineligible for equal access to the justice system or participation in American democracy.²

It was as simple, and as complicated, as that.

In the period between the American Revolution and the US Civil War, practical and ideological understandings of citizenship and democracy were heavily influenced by the issue of Black freedom. Citizenship is defined here, in the words of Chief Justice Taney in the *Dred Scott* decision, as “member[ship] of the community who forms the sovereign,” and democracy is defined in the post-revolutionary American context of a republican system of representative self-government in which the exercise of political power is limited by the rule of law, and individual freedoms and civil and political rights are accorded to eligible members of the citizenry.³ The free Black population expanded continually during this period, both in the North and South, from some 60,000 at the time

2 “The *Dred Scott* Case: The Important Decision of the U.S. Supreme Court,” *Daily Dispatch*, 11 March 1857 (quotes); *Dred Scott v. Sanford* (final quote). See also Kelly M. Kennington, *In the Shadow of Dred Scott: St. Louis Freedom Suits and the Legal Culture of Slavery in Antebellum America* (Athens: University of Georgia Press, 2017), 172; Paul Finkelman, “*Scott v. Sandford*: The Court’s Most Dreadful Case and How It Changed History,” *Chicago-Kent Law Review* 82, no. 3 (2007): 3–48. The Court essentially declared the United States a *Herrenvolk* republic, where only White people could be counted as citizens. See Pierre vanden Berghe’s seminal work on *Herrenvolk* democracies, *Race and Racism: A Comparative Perspective* (New York: Wiley & Sons, 1967); and David R. Roediger, *The Wages of Whiteness: Race and the Making of the American Working Class* (New York: Verso, 1992).

3 *Dred Scott v. Sanford*. For a detailed legal analysis of understandings of free Black citizenship in antebellum America, see the seminal paper by Henry J. Chambers, *Slavery, Free Blacks and Citizenship*, 43 *Rutgers L.J.* (2013). There is a vast literature on the different and evolving definitions of democracy, including its relationship to republicanism, in various contexts. For some of the most recent works, see for example Joanna Innes and Mark Philp, eds., *Re-Imagining Democracy in the Age of Revolutions: America, France, Britain, Ireland, 1750–1850* (Oxford: Oxford University Press, 2013); James T. Kloppenberg, *Toward Democracy: The Struggle for Self-Rule in European and American Thought* (New York: Oxford University Press, 2016); Josiah Ober, *Demopolis: Democracy before Liberalism in Theory and Practice* (Cambridge: Cambridge University Press, 2017); Paul Cartledge, *Democracy: A Life* (Oxford: Oxford University Press, 2016); Mark Hulliung, *From Classical to Modern Republicanism: Reflections on England, Scotland, America and France* (New York: Routledge, 2020); Katlyn Marie Carter, *Democracy in Darkness: Secrecy and Transparency in the Age of Revolutions* (New Haven: Yale University Press, 2023).

of the first census in 1790 to over 488,000 in 1860. Between 1777 and 1804, all of the northern states abolished slavery within their jurisdictions, most of them gradually, slowly converting their enslaved populations into free Black populations. Congress also banned slavery in the newly acquired Northwest Territory in 1787, placing the future of the midwestern states on the same path as those of the other northern states. The southern states, by contrast, briefly increased manumissions in the wake of the Revolution—bolstering free Black communities within their borders—but subsequently redoubled their commitment to slavery, expanding it into the newly acquired frontier territories of the trans-Appalachians. As the nation became bifurcated, with one half of the union committed to some version of Black “freedom” and the other half to slavery, disputes within and among states arose regarding the citizenship rights and legal personhood of African Americans who were either legally free (through birth, manumission, or emancipation) or who were legally enslaved but had escaped to free soil. To what extent should they be considered members of the polis, with access to the legal and constitutional rights and privileges that such membership entailed? Could they be reenslaved, and if so, under what conditions? Did they have the right to move across state borders? Did they have equal access to the justice system? Could they participate in democracy? These disputes in turn constituted the driving force behind state-level and sectional conflicts over the relationship between race, citizenship, democracy, and state sovereignty—conflicts that not only encompassed the fugitive slave crisis and the Dred Scott decision itself, among others, but ultimately led the United States down the path to civil war.

This article proposes new ways of thinking about and conceptualizing the influence of Black freedom on the development of citizenship and democracy in the United States between 1783 and 1861. It argues that various states in the antebellum period, north *and* south, developed different and often conflicting approaches to both citizenship and democracy, based on the ways in which local communities understood and experienced Black freedom—in particular the degree to which free Black populations were considered eligible for citizenship rights (including freedom from enslavement, the right to residency, access to the justice system and economic freedoms) and political participation. Free Black populations, in turn, developed different strategies of survival that helped them navigate—indeed, helped *shape*—the very different landscapes of freedom in which they moved and resided, even in states in which various rights and privileges associated with citizenship were explicitly circumscribed or denied them.⁴ In short, this study examines and underscores the

4 For more on how free Black populations defied citizenship restrictions by *acting like citizens*,

spectrum of citizenship and democracy in antebellum America by focusing on how these concepts related to free African Americans across time and space, both in theory and in practice. It advances a new conceptual framework that is potentially applicable to other (post-)revolutionary Atlantic societies, arguing that US states during the antebellum period developed three distinct “varieties” of citizenship and democracy, informed by their experiences with newly established communities of free Blacks within their borders, namely: *civic democracies* (where free Blacks were considered full citizens), *racial democracies* (where free Blacks were considered non-citizens), or *hybrid democracies* (where free Blacks were considered second-class citizens), respectively, depending on how local communities understood and experienced Black freedom.

In the first section of this article, this new conceptual framework is explained in general terms, illuminating the relationship between Black freedom, citizenship, and democracy in various American states in the post-revolutionary era. It is also briefly positioned within the historical literature on Black citizenship and democracy. In the second section, the application of this new conceptualization is applied to three case studies whose histories fall upon different points along the spectrum, namely: Massachusetts (a state that developed in the direction of a *civic democracy* in the antebellum period), Virginia (a *racial democracy*), and Ohio (a highly contested *hybrid democracy*). It is important to note that this article does *not* portend to constitute an exhaustive empirical study of the relationship between Black freedom and civic, racial, and hybrid democracies in each of these American states during the era of slavery. Indeed, each case study under examination here merits entire volumes of scholarship. Rather, the intention here is to advance a new conceptualization and consider the *spectrum* of democracies and citizenship regimes that emerged in various parts of antebellum America as a result of different understandings of Black freedom.

see for example Martha S. Jones, *Birthright Citizens: A History of Race and Rights in Antebellum America* (Cambridge: Cambridge University Press, 2018); Stephen Kantrowitz, *More than Freedom: Fighting for Black Citizenship in a White Republic, 1829–1889* (New York: Penguin, 2012); Van Gosse, *The First Reconstruction: Black Politics in America from the Revolution to the Civil War* (Chapel Hill: University of North Carolina Press, 2021); Kate Masur, *Until Justice Be Done: America's First Civil Rights Movement, from Revolution to Reconstruction* (New York: W.W. Norton, 2022).

2 Civic, Racial, and Hybrid Democracies in the Early United States

The main argument of this article is that various states in the antebellum period—north *and* south—developed different and often conflicting approaches to both citizenship and democracy, based on the ways in which local communities understood and experienced Black freedom. At one end of the spectrum, a few northeastern states—most notably Massachusetts, Maine, and New Hampshire—developed in the direction of *civic democracies*, whereby free Black populations came to navigate legal, economic, judicial, and political landscapes from positions approaching *full citizenship*. In other words, free Black people in civic democracies came to be considered “members of the community who forms the sovereign” and eligible for political participation, with very few racially motivated restrictions. Most laws and the execution of the justice system in these states throughout the antebellum period were theoretically colorblind, and the development of citizenship and civil society were not formally obstructed on the basis of race or racial exclusion. Although all-encompassing definitions of citizenship were not always codified into law, African Americans in civic democratic states like Massachusetts and Maine came to be essentially accorded most—indeed almost all—of the rights and privileges of other citizens, at least on paper. The few attempts to curtail African Americans’ rights on the basis of racial exclusion in these states during the antebellum period were often successfully challenged by free Black communities and their White political allies—challenges that were only made possible by the existence of colorblind interpretations of certain civil rights. Residents of these states also fiercely resisted federal fugitive slave laws—widely perceived as unjust infringements on state-level citizenship rights for free African Americans—and authorities strove to apply habeas corpus principles to accused runaways from the southern states, conferring upon them the legal rights associated with citizenship and personhood until their status could be determined. African American civil society and political participation (in particular as related to abolitionism and even the advancement of free Black citizenship rights in other states) flourished in civic democratic states.

Southern slave states, meanwhile, developed in the direction of *racial democracies*, conferring social and political rights on the basis of race and relegating free Black populations to navigate perilous landscapes of *non-citizenship*. Free Black people in these states were rejected from “membership of the community who forms the sovereign,” were heavily restricted in their freedom from slavery (which was considered conditional), and were denied political participation due to their race. Racial democracies were essentially *Herrenvolk* democracies—the term “racial” here is chosen deliberately to un-

derscore the importance of *race* (rather than *ethnicity*) in the development of these republican societies. Although open to the liberalization of manumission laws in the revolutionary period, the seaboard southern slave states had rapidly become overtly hostile to Black freedom by the opening decade of the nineteenth century, severely circumscribing rights and privileges for free Blacks, often calling for forced White patronage, demanding self-expulsion of newly manumitted people, and even allowing for the legal reenslavement and indentured servitude of Black people as punishment for certain crimes. Most antebellum slave states furthermore excluded non-Whites from any form of political participation or expression (including prohibitions or severe restrictions of assembly and press), curtailed their access to the justice system, and allowed free Black civil society only in non-politicized “mutual aid” and church societies. All of these efforts served to *depress* democratic participation in an era that championed the expansion of democratization—at least among White men, the group that defined the parameters of membership of the polis. Coordinated resistance to racial interpretations of citizenship and democratic rights was generally absent in these states due to widespread censorship and fear of violent responses; instead, individuals and small groups (often family groups) usually resisted by either ignoring certain exclusionary laws or petitioning for personal exemptions. In southern racial democracies, Black freedom was essentially considered a *privilege* rather than a *right*—indeed, one that could be revoked by state authorities. Free African Americans in racial democratic states lacked many of the rights and privileges associated with legal personhood, were able to publicly organize only in severely limited manifestations of civil society, and often operated from positions of illegal residency and extreme dependency.

A third variety emerged in most of the northern free states, most notably (though not exclusively) in the states carved out of the Northwest Territory along the Ohio River borderlands, such as Ohio, Indiana, and Illinois, but also in many of the mid-Atlantic states. These states developed in the direction of highly contested *hybrid democracies*, whereby antebellum free Black populations found themselves navigating legal, economic, judicial, and political landscapes of *second-class citizenship*, although they constantly fought for elements of full citizenship that they found most important (such as political inclusion and residency rights), to varying degrees of success. Free Black populations in these states were only partially accepted “members of the community who forms the sovereign;” that is, they were excluded from important aspects of community membership solely on the basis of their race. Hybrid democratic states prohibited slavery and allowed runaway slaves access to limited legal rights until it could be proven that they were runaways. However, they also

barred most African Americans from political participation—which served, as they did in racial democracies, to depress democratic participation—and implemented “Black laws” that denied important citizenship rights for free Blacks, imposed draconian residency laws, and circumscribed their participation in local economies. The main distinction between the status of free African Americans in racial and hybrid democratic states lie in the fact that legal personhood (i.e., freedom from enslavement) for free Blacks in hybrid democracies constituted a guaranteed right (runaway slaves constituting an exception, as dictated by federal law), whereas in racial democracies it was considered a privilege that could be revoked. Another distinction between racial and hybrid democratic states lie in the level of coordinated activism and overt resistance to “Black laws” and political exclusion, as well as the degree of success achieved in achieving full inclusion. Free Black civil society and political activism flourished in hybrid democratic states and was aimed at acquiring full citizenship rights and privileges—with limited success by the end of the antebellum period—as well as advancing the cause of abolition in the South. In some states, coordinated biracial activism succeeded in pushing hybrid democratic states in the direction of civic democracies by the late antebellum period.

This new way of thinking about the relationship between Black freedom, citizenship, and democracy in antebellum America in terms of civic, racial, and hybrid democracies may serve to bring nuance to a rich and ever-growing body of scholarship along three main axes. First, it contributes to recent developments in the literature on the relationship between race and the development of American citizenship and democracy in the post-revolutionary era, which traditionally tended to focus on developments at the *national* level—or national *conflicts* between federal and state government—rather than at the local *state* level, where most issues involving citizenship and racial exclusion were in fact determined.⁵ In recent years scholars have begun to problematize

5 See for example James H. Kettner, *The Development of American Citizenship, 1608–1870* (Chapel Hill: University of North Carolina Press, 2005); Sean Wilentz, *The Rise of American Democracy*, 2 vols (New York: W.W. Norton, 2005); Rogers W. Smith, *Civic Ideals: Conflicting Visions of Citizenship in US History* (New Haven: Yale University Press, 1997); Kloppenberg, *Toward Democracy*; Woody Holton, *Unruly Americans and the Origins of the Constitution* (New York: Hill & Wang, 2007); Terry Bouton, *Taming Democracy: “The People,” the Founders, and the Troubled Ending of the American Revolution* (New York: Oxford University Press, 2007); Max Edling, *A Revolution in Favor of Government: Origins of the US Constitution and the Making of the American State* (New York: Oxford University Press, 2003); Alexander Keyssar, *The Right to Vote: The Contested History of Democracy in the United States* (New York, 2001); Linda K. Kerber, “The Meanings of Citizenship,” *Journal of American History* 84:3 (1997): 835. Also for the relationship between Black citizenship and democracy, see: Van Gosse and David

national narratives, producing several fine works that examine localized case studies at the regional, state and even municipal levels, but virtually none from perspectives that take into account the diversity in African Americans' experiences with citizenship and democracy across states, north *and* south.⁶ What is

Waldstreicher, eds., *Revolutions and Reconstructions: Black Politics in the Long Nineteenth Century* (Philadelphia: University of Pennsylvania Press, 2020); Kantrowitz, *More than Freedom*; George M. Frederickson, "The Historical Construction of Race and Citizenship in the United States," in George M. Frederickson, ed., *Diverse Nations: Explorations in the History of Racial and Ethnic Pluralism* (Boulder: Paradigm, 2008); Christian G. Samito, *Becoming American Under Fire: Irish Americans, African Americans, and the Politics of Citizenship during the Civil War Era* (Ithaca: Cornell University Press, 2009); Judith N. Shklar, *American Citizenship: The Quest for Inclusion* (Cambridge, Mass.: Harvard University Press, 1991); Jones, *Birthright Citizens*; For the legal culture underpinning struggles for citizenship and inclusion, see for example: William J. Novak, "The Legal Transformation of Citizenship in Nineteenth-Century America," in Meg Jacobs, William J. Novak, and Julian Zelizer, *The Democratic Experiment: New Directions in American Political History* (Princeton: Princeton University Press, 2003), 85–119; F. Edwards, *The People and Their Peace: Legal Culture and the Transformation of Inequality in the Post-Revolutionary South* (Chapel Hill: The University of North Carolina Press, 2009); Kennington, *In the Shadow of Dred Scott*; Loren Schweninger, *Appealing for Liberty: Freedom Suits in the South* (Oxford: Oxford University Press, 2018); Kimberly M. Welch, *Black Litigants in the Antebellum American South* (Chapel Hill: The University of North Carolina Press, 2018); Anne Twitty, *Before Dred Scott: Slavery and Legal Culture in the American Confluence, 1787–1857* (New York: Cambridge University Press, 2016); Smith, *Civic Ideals*; William A. Link, et al., eds., *Creating Citizenship in the Nineteenth-Century South* (Gainesville: University Press of Florida, 2013).

- 6 The literature of localized explorations of free Black experiences with limited rights and citizenship is too vast to reproduce here. See for example the contributions that deal with localized case studies in Manisha Sinha and Penny von Eschen, ed., *Contested Democracy: Freedom, Race, and Power in American History* (New York: Columbia University Press, 2007); as well as those in Gosse and Waldstreicher, *Revolutions and Reconstructions*; and in Link and Brown, eds., *Creating Citizenship*. See also for example David N. Gellman and David Quigly, *A Documentary History of Race and Citizenship, 1777–1877* (New York: New York University Press, 2003); Nikki M. Taylor, *Frontiers of Freedom: Cincinnati's Black Community, 1802–1868* (Athens: Ohio State University Press, 2005); Andrew Diemer, *The Politics of Black Citizenship: Free African Americans in the Mid-Atlantic Borderland, 1817–1863* (Athens: University of Georgia Press, 2016); Ted Maris-Wolf, *Family Bonds: Free Blacks and Re-enslavement Law in Antebellum Virginia* (Chapel Hill: University of North Carolina Press, 2015); Glenn McNair, *Criminal Injustice: Slaves and Free Blacks in Georgia's Criminal Justice System* (Charlottesville: University of Virginia Press, 2009); Eva Sheppard Wolf, *Race and Liberty in the New Nation: Emancipation in Virginia from the American Revolution to Nat Turner's Rebellion* (Baton Rouge: Louisiana State University Press, 2006); Masur, *Until Justice be Done*; Anna-Lisa Cox, *The Bone and Sinew of the Land: America's Forgotten Pioneers & the Struggle for Equality* (New York: Public Affairs, 2018); Alejandro de las Fuentes and Ariela Julie Gross, *Race, Freedom, and Law in Cuba, Virginia, and Louisiana* (New York: Cambridge University Press, 2020).

missing in the historical literature is an appreciation of the *spectrum of state-level experiments with Black citizenship and democracy* in this period, and the ways in which free Black communities throughout the United States navigated and helped shape these experiments. This study aims to take the first steps in filling that gap, taking a broader comparative, conceptually innovative and state-level approach, and arguing that the development of American democracies (plural) in the post-revolutionary era varied from state to state, ultimately crystallizing into three distinct varieties along a broad spectrum, based on local experiences with Black freedom.

Second, this conceptualization contributes to the historiography on free Blacks in antebellum America by moving away from singular approaches that flatten or generalize experiences with Black freedom throughout the United States. Most historians argue that free Blacks in antebellum America were essentially *all* treated as non-citizens and non-members of the body politic in an era that has often been referred to as “the White Republic,” whether they lived in the northern or southern states. For decades, at least going back to Leon Litwack’s masterful study of free Black communities in the northern states, *North of Slavery* (1961), historians have argued that free Black people—wherever they lived—were non-citizens and non-persons before to the law, although they waged noble struggles for community improvement, economic independence, education, and abolition. Litwack’s book examined only the northern states, but his thesis was applied by revisionist historians to free Black communities everywhere, in both the North and South; indeed, he himself proposed to do so, arguing that when it came to the status and treatment of free Black people in antebellum America, “the Mason-Dixon line [was] a convenient but an often misleading geographic division.” Ira Berlin’s excellent study of free Black communities in the antebellum South, *Slaves Without Masters* (1974), also embraced the conviction that free Blacks navigated antebellum America from positions of non-citizenship and non-personhood, as its title suggests. Linda Kerber even famously argued in 1997 that there was no such thing as a “free” Black person in antebellum America. Prior to the Civil War, she underscored, “free African American men could not serve in the militia or carry the mail. ‘Free’ Blacks were forbidden to move into some states, and slave states often required emancipated slaves to move out of state and never return.” Such restrictions so severely impinged upon their experiences of freedom that they could hardly be called “free” at all.⁷

7 Leon Litwack, *North of Slavery: The Negro in the Free States, 1790–1860* (Chicago: University of Chicago Press, 1961); Ira Berlin, *Slaves Without Masters: The Free Negro in the Antebellum*

Recent scholarship by Stephen Kantrowitz, Van Gosse, Martha Jones, Kate Masur, and many others, has expertly revealed the active ways in which free Black people successfully fought for citizenship rights—from birthright citizenship to the right to vote. Most recent studies have largely sustained the interpretation of Black freedom in the antebellum period as essentially unfree and closer to slavery than freedom, however. Indeed, the Dred Scott decision has often been considered little more than federal approval of what individual states had been doing from the earliest years of the republic: denying all Black people any form of citizenship and legal rights, and denying them from political participation.⁸ Such perspectives often overlook the differences in localized experiences of Black freedom and the challenges that free Blacks posed to exclusionary politics in various polities. By thinking of antebellum America in terms of civic, racial, and hybrid democracies, historians are confronted with the unavoidable truth that *where free Black people lived mattered*, and that their experiences differed across time and space. In short, the conceptualization proposed here underscores the diversity in local experiences with Black freedom in the antebellum period. Comparative, state-level approaches to the issue reveal that there was in fact no single definition of Black freedom during this period, but that the experiences of Black citizenship and democracy in fact varied widely from state to state. Free Black communities throughout antebellum America experienced and helped shape racialized landscapes that approached full citizenship, second-class citizenship, *and* non-citizenship, depending on time and place.

South (New York: Pantheon Books, 1974). The phrase “slaves without masters” was coined by pro-slavery ideologue George Fitzhugh, in his 1857 treatise *Cannibals All! Or Slaves Without Masters* (Richmond, Va.: A. Morris, 1857). Kerber, “The Meanings of Citizenship,” 842 (quote); Oran Patrick Kennedy, *Northward Bound: Slave Refugees and the Pursuit of Freedom in the Northern US and Canada, 1775–1861* (Boston: Brill, forthcoming).

- 8 See for example Kantrowitz, *More than Freedom*; Gosse, *The First Reconstruction*; Jones, *Birthright Citizens*; Masur, *Until Justice be Done*; Link and Brown, eds., *Creating Citizenship*; Cox, *The Bone and Sinew of the Land*; De las Fuentes and Gross, *Race, Freedom, and Law*; Melvin Patrick Ely, *Israel on the Appomattox: A Southern Experiment in Black Freedom from 1790 through the Civil War* (New York: Knopf, 2005); Wolf, *Race and Liberty*; Samantha Seeley, *Race, Removal, and the Right to Remain: Migration and the Making of the United States* (Chapel Hill: University of North Carolina Press, 2022); Warren Eugene Milteer, Jr., *Beyond Slavery's Shadow: Free People of Color in the South* (Chapel Hill: University of North Carolina Press, 2022); Eddie Wong, *Neither Fugitive nor Free: Atlantic Slavery, Freedom Suits, and the Legal Culture of Travel* (New York: New York University Press, 2009); Michael A. Schoeppner, *Moral Contagion: Black Atlantic Sailors, Citizenship, and Diplomacy in Antebellum America* (New York: Cambridge University Press, 2019).

Third, this conceptual framework is potentially applicable in whole or in part to historical scholarship on the nature of Black freedom in other post-revolutionary Atlantic societies. Indeed, its potential applicability is clear even within other North American societies during the early nineteenth century. In colonial British Canada and revolutionary Mexico, the pressing issue of Black freedom from slavery also deeply impacted local understandings of citizenship and democracy. Both transitioned into free soil societies in this period, with the Canadian province of Upper Canada (later Canada West and presently Ontario) adopting the gradual abolition of slavery as early as 1793—a process that was ultimately completed there in 1819 and for the rest of Canada in 1834 with the implementation of imperial abolition throughout the British Empire—and revolutionary Mexican states adopting a series of abolition acts after breaking away from the Spanish Empire in 1821, ultimately embracing national abolition in 1836. Both converted their enslaved populations into free populations in tandem with the northern United States, and both developed in the direction of civic democracies—colonial British Canada at the local level, with colorblind interpretations of imperial subjecthood constituting the main factor in determining civil rights and local political participation; and Mexico embracing civic interpretations of national republican ideals, but leaving practical issues of enforcement and precise interpretations of issues related to civil rights to state and local authorities. Severe racial discrimination and overt popular resistance often impeded the practical application and exercise of citizenship rights and political power for Black people in both nations. Crucially, conflicts and disputes related to Black citizenship and democracy in both British Canada and Mexico not only revolved around formerly enslaved populations within their own borders but also thousands of Black migrants from the United States, many of them fugitive slaves. By the outbreak of the US Civil War in 1861, an estimated 30,000 Black migrants from various American states were residing in the Canadian provinces (most of them in Canada West, formerly “Upper Canada” and presently Ontario), while up to 10,000 Black migrants from the US had settled in the northern Mexican states (especially Tamaulipas, Nuevo León and Coahuila). The influx of tens of thousands of Black migrants and refugees tested the commitment of Canadian provinces and Mexican states to colorblind civic democracy and led to the rise of popular campaigns to deport undesired Black migrants and implement more racially discriminatory forms of hybrid democracy. Conversely, they also led to individual and collective actions on the part of Black migrants to realize the full potential of civic democracy in their adopted homelands, especially in Canada. The ways in which historians approach the relationship Black freedom and citizenship in other Atlantic societies during the same period—from Haiti to the

newly independent Latin American republics—may benefit from considering the diversity of (contested) democratic “models” applied throughout the hemisphere.⁹

3 Three Landscapes of Black Citizenship and Democracy

How might this conceptual framework be applied in practice? This section examines these state-level varieties of antebellum citizenship and democracy from a comparative perspective, namely by exploring the legal landscape and practical experiences of free Black communities in three specific US states, each representative of its respective category. Specifically, it explores free African Americans’ experiences with civic democracy and full citizenship in Massachusetts; racial democracy and non-citizenship in Virginia; and a contested version of hybrid democracy and second-class citizenship in Ohio. The case studies explore the experiences of Black freedom with respect to the most important tenets underlying citizenship and democracy in antebellum America, in particular those related to legal freedom (including residency, access to

9 See Anna Plassart and Hugo Bonin, “Democratic Struggle or National Uprising? The Canadian Rebellions in British Political Thought, 1835–1840,” *Global Intellectual History* 7, vol. 1 (2022): 28–46; Sydney Nathans, *To Free a Family: The Journey of Mary Walker* (Cambridge, Mass.: Harvard University Press, 2012); Richard Blackett, *Making Freedom: The Underground Railroad and Politics of Freedom* (Chapel Hill: University of North Carolina Press, 2013); Eric Foner, *Gateway to Freedom: The Hidden History of the Underground Railroad* (New York: W.W. Norton, 2016); Andrew Delbanco, *The War Before the War: Fugitive Slaves and the Struggle for America’s Soul from the Revolution to the Civil War* (New York: Penguin, 2019); Robert H. Churchill, *The Underground Railroad and the Geography of Violence in Antebellum America* (New York: Cambridge University Press, 2020). See also Graham Russel Gao Hodges, *David Ruggles: A Radical Black Abolitionist and the Underground Railroad in New York City* (Chapel Hill: University of North Carolina Press, 2012); Steven Lucket, *Fugitive Justice: Runaways, Rescuers, and Slavery on Trial* (New York: Cambridge University Press, 2010); Alice L. Baumgartner, *South to Freedom: Runaway Slaves to Mexico and the Road to Civil War* (New York: Basic Books, 2020); James David Nichols, *The Limits of Liberty: Mobility and the Making of the Eastern US-Mexico Border* (Lincoln: University of Nebraska Press, 2018); James David Nichols, “Freedom Interrupted: Runaway Slaves and Insecure Borders in the Mexican Northeast,” in Damian Alan Pargas, ed., *Fugitive Slaves and Spaces of Freedom in North America* (Gainesville: University Press of Florida, 2018), 251–274; Sarah E. Cornell, “Citizens of Nowhere: Fugitive Slaves and Free African Americans in Mexico, 1833–1857,” *Journal of American History* 100, no. 2 (2013): 351–374; Mekala Audain, “Mexican Canaan: Fugitive Slaves and Free Blacks on the American Frontier, 1804–1867” (PhD diss., Rutgers University, 2014); Thomas Mareite, *Conditional Freedom: Free Soil and Fugitive Slaves from the US South to Mexico’s Northeast, 1803–1861* (Boston: Brill, 2023); Damian Alan Pargas, *Freedom Seekers: Fugitive Slaves in North America, 1800–1860* (New York: Cambridge University Press, 2022).

the justice system and [re-]enslavement); property and economic rights; and participation in civil society and the body politic.

Each of the case studies under examination here—Massachusetts, Virginia, and Ohio—were chosen because they collectively represent three distinct landscapes of Black citizenship and democracy in antebellum America. Each respectively constitutes an illustrative example of a state developing in the direction of either an extreme or middle ground along the spectrum of black citizenship and democracy during this period. Each also served as a model to neighboring states in the region—Massachusetts to northern New England, Virginia to the southern slaveholding states, and Ohio to the new states carved out of the Northwest Territory (although it would ultimately diverge from its neighbors in the decade preceding the Civil War, as will become clear below). All three states developed over time and therefore *never* constituted static models; indeed, none of the three states examined here emerged from the American Revolution committed to any all-encompassing visions of citizenship rights (or lack thereof) for African Americans. Civic, racial, and hybrid democracies in antebellum America were constantly evolving and everywhere legislation with respect to free Blacks' rights was wrought with theoretical and practical inconsistencies. In all states, however, the development of citizenship for free Blacks was directly linked to discussions about slavery—and the future of slavery—in the revolutionary and antebellum periods. Wherever they resided—whether in Massachusetts, Virginia, or Ohio—the experiences of free Blacks were marred by the long shadows of slavery in their respective states, regions, and the nation at large. All three case studies examined here witnessed the rapid growth of free black populations in the wake of the Revolution, but the extent to which Black freedom from slavery translated into rights and inclusion in the body politic was a dilemma that each developing state approached differently during the antebellum period.

In Massachusetts, one of the first states in the union to abolish slavery in the wake of the American Revolution, and one of only two northern states to do so immediately rather than gradually, the transition to Black freedom developed more radically in the direction of civic democracy than in most other states. Even there, however, the adoption of broad citizenship rights for African Americans was anything but inevitable and subject to change over time. Abolition in Massachusetts came about as a result of a series of court cases—culminating in the Quock Walker case of 1783—in which African Americans sued for freedom on the basis that slavery violated the state constitution of 1780, which declared that “all men are born free and equal, and have certain natural, essential, and unalienable rights.” The Massachusetts Supreme Judicial Court ultimately agreed. In the final decision of the Quock Walker

case, Chief Justice William Cushing declared that the Declaration of Rights embedded in the Massachusetts Constitution of 1780 constituted grounds to confirm Walker's freedom, arguing that the Constitution's affirmation that "all men are born free and equal" rendered slavery legally interdicted throughout the state. The chief justice went so far as to argue that in both spirit and wording the document was "totally repugnant to the idea of being born slaves." Whatever had theretofore been the common practice, Cushing opined, "a different idea has taken place with the people of America, more favorable to the natural rights of mankind, [and] innate desire of Liberty, with which Heaven (without regard to color, complexion, or shape of noses) has inspired all the human race." Announcing that "slavery is inconsistent with our own conduct and Constitution" and that "there can be no such thing as perpetual servitude of a rational creature," the Court destroyed the legal basis for slavery in Massachusetts, and the state legislature subsequently found it unnecessary to enact any formal abolition. Slaveholders reluctantly acquiesced and the institution quickly eroded. The federal census of 1790 recorded no enslaved people living anywhere in the commonwealth—by then all African American residents of Massachusetts were considered legally free.¹⁰

Legal freedom did not immediately translate into full citizenship rights, however, despite the fact that Black claims to full "inalienable rights" were embedded in the decision that abolished slavery in the first place. Immediately following the Quock Walker case, the Massachusetts General Assembly engaged in vigorous debates about the precise status of free African Americans within the state. Lawmakers especially worried about issues related to expected increases in crime, vagrancy, and poverty. In March 1788, the legislature passed a law barring residents from participating in the slave trade (aimed at protecting free Blacks from kidnapping and illegal reenslavement), but also a law aimed at protecting the state from "Rogues, Vagabonds, common Beggars, and other idle, disorderly and lewd persons," which restricted Black migration to the state, declaring that "no person being an African or Negro, other than

10 "Commonwealth v. Jennison," 20 Apr. 1783, *Proceedings of the Massachusetts Historical Society (1873–1875)*, vol. XIII (1875): 292–294, 294 (quotes); George H. Moore, *Notes on the History of Slavery in Massachusetts* (New York: Appleton & Co., 1866), 247. The Quock Walker case built upon an earlier case in which an enslaved woman, "Mum Bett" (later known as Elizabeth Freeman) successfully sued for her freedom in 1781 on the grounds that the preamble of the Massachusetts constitution entitled her to the same rights as white residents of the commonwealth. See Gary Nash, *The Unknown American Revolution: The Unruly Birth of Democracy and the Struggle to Create America* (New York: Penguin, 2005), 408–409; Douglas R. Egerton, *Death or Liberty: African Americans and Revolutionary America* (New York: Oxford University Press, 2009), 93–121.

a subject of the Emperor of Morocco or a citizen of some one of the United States,” could remain in the state for more than two months. The wording of the latter bill is telling: only free Blacks already considered “citizens” in other states (“evidenced by a certificate from the Secretary of the State of which he shall be a citizen”), fell under the exception. The phrasing was meant to comply with the US Constitution, Article IV, Section 2, which declared that the “Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States,” and which Massachusetts had just ratified a month earlier. The Massachusetts law placed the burden of determining whether or not free Black migrants were citizens on the states from which they migrated. Otherwise, they could theoretically be asked to leave after two months, or—if they refused—imprisoned.¹¹ The law was never enforced, however, and it was widely ignored by Black migrants, who continued to arrive and settle in Massachusetts anyway. In the 1820s the ban even became the center of controversy in the wake of national debates over the Missouri question, when Massachusetts affirmed that African Americans within its state borders were unequivocally considered full citizens. It does, however, speak volumes about the fears of White residents with respect to free Black populations in the aftermath of the Revolution. In 1830 the 1788 Black residency law was erased from the books when the state legislature adopted a new legal code and left it out. Massachusetts lawmakers came to understand free Black migrants as citizens, as understood in Article IV of the US Constitution.¹²

Massachusetts thereafter came to distinguish itself in the United States for its commitment to civic democracy—not only for *not* imposing restrictions on Black migration or settlement, and thereby accepting them as members of the community, but also affirming Black people civil, social rights, and political that included access to public education, unimpeded access to the justice system, Black testimony in court, Black male suffrage, and even—by 1843, after tireless campaigning—interracial marriage. Free Black people—including fugitive slaves—became active participants in political life, especially in communities such as Boston and New Bedford. Recent scholarship by Van Gosse has revealed the extent to which Black voters in Massachusetts played decisive roles in local elections in New Bedford, for example. Similarly, research by

11 Kantrowitz, *More than Freedom*; Masur, *Until Justice Be Done*, 11; “An Act for suppressing and punishing of Rogues, Vagabonds, common Beggars, and other idle, disorderly and lewd persons,” General Assembly of the Commonwealth of Massachusetts, 26 March 1788; United States Constitution, Article IV, Section 2 (<https://www.archives.gov/founding-docs/constitution-transcript>).

12 Masur, *Until Justice Be Done*, 56–58.

Stephan Kantrowitz has demonstrated how active Black political actors were in the Boston area in their campaigns for not only abolition in the southern states but also full equality and acceptance in the northern states as well. One discriminatory law remained on the books, which barred Black service in the state militia, a glaring contradiction to the commonwealth's otherwise color-blind legal codes. This prohibition was the target of fierce attacks by Black and White abolitionists throughout the antebellum period; African American men even formed their own Black militias in protest, but they did not succeed in repealing the law before the Civil War. Indeed, this law was specifically referred to by Chief Justice Taney in the Dred Scott decision as evidence that even in the most liberal free states Black people were not considered eligible for the same level of citizenship as Whites. The law prevented Massachusetts from achieving any pure form of civic democracy before the Civil War. But the Massachusetts political and judicial establishment otherwise committed itself to full civil rights for free Blacks, and fought hard to lobby for national civil rights as well as defend the rights of its Black citizens—whom it specifically referred to as “citizens”—incarcerated and, in some cases, even reduced to slavery in the southern states. Freedom from (re-)enslavement for the free Black population living within the borders of Massachusetts was vigorously enforced through anti-kidnapping and personal liberty laws—and even fugitive slaves living there were more often than not protected from rendition to the slaveholding states due to a widespread unwillingness among state authorities and the general public throughout to comply with federal fugitive slave laws, even after the Dred Scott decision was handed down in 1857.¹³

Virginia, by contrast, developed in more or less the opposite direction as Massachusetts with respect to Black citizenship and democracy during the antebellum period. Rather than adopting civic democratic ideals and interpreting Black freedom through the lens of universal inalienable rights, the largest slave state in the early republic embraced racial democratic ideals from the beginning, restricting citizenship, civil rights, and even full legal personhood to Whites and explicitly denying them to Blacks. The different trajectory of Virginia was mainly rooted in the importance of slavery to the state's economic, social, and political fabric, and its more fraught relationship with Black free-

13 Masur, *Until Justice Be Done*, 143–150; Amber Moulton, *The Fight for Interracial Marriage Rights in Antebellum Massachusetts* (Cambridge, Mass.: Harvard University Press, 2015), 1–2; Gosse, *The First Reconstruction*, ch. 6; Kantrowitz, *More than Freedom*; Schoepner, *Moral Contagion*, 145–158. Black children were permitted to attend public schools but Boston school segregation was upheld by the *Roberts v. City of Boston* case in 1849. The state legislature abolished school segregation a few years later in 1855, however.

dom than New England's—although even in Virginia revolutionary ideals had a substantial impact on discussions and even legislation regarding Black freedom in the 1780s. Several prominent Virginians of the revolutionary generation openly expressed their doubts about the legitimacy and desirability of slavery in the new republic, even before many of the northern states moved to abolish the institution. By the time the Quock Walker case came before Chief Justice Cushing in Massachusetts, the General Assembly of Virginia had already enacted a law aimed at facilitating and stimulating the manumission of slaves held in that state. While it did *not* abolish slavery itself, the *Act to Authorize the Manumission of Slaves* of 1782 simplified the freeing of bondpeople under the age of forty-five held by slaveholders of the revolutionary generation who, for whatever reason, struggled with the idea of their slaves living out the rest of their lives in perpetual servitude. Virginia slaveholders made good use of it in the decades subsequent to its passage, including some of the wealthiest and most respected gentlemen in the commonwealth. George Washington famously employed the act to arrange for the manumission of his slaves in his will (he died in 1799). Robert Carter III—the largest slaveholder in Virginia—moved to release 452 slaves from bondage between 1791 and his death in 1804. The example of these icons of the slaveholding class was followed by countless smaller slaveholders in every corner of the state. Whereas before 1782 less than one percent of Virginia's African-American population was free, by 1790 free Blacks accounted for 4.2 percent of the total and by 1810 they had reached 7.2 percent, surging in absolute numbers from 1,800 to 30,570 in less than thirty years.¹⁴

Although manumissions rose sharply among Virginia slaveholders in the revolutionary era, attempts to enact abolition were unsuccessful, mainly due to grave misgivings among large swaths of the White population concerning the compatibility of Blackness and freedom. Thomas Jefferson drafted several bills of abolition for the legislature of his native Virginia, for example, but complained in 1786 that while there were “men enough of virtue and talent in the

14 *An Act to Authorize the Manumission of Slaves* (May 1782), in William Waller Hening, ed., *The Statutes at Large; Being a Collection of All the Laws of Virginia from the First Session of Legislature, in the Year 1619* (Richmond, Va: George Cochran, 1823), vol. XI: 39; St. George Tucker, *A Dissertation on Slavery: With a Proposal for the Gradual Abolition of It in the State of Virginia* (Philadelphia: Mathew Carey, 1796); *The Constitution of the Virginia Society, for Promoting the Abolition of Slavery and the Relief of Negroes*, etc., reprinted in the *Virginia Gazette & Petersburg Intelligencer*, 8 Jul. 1790; Peter Kolchin, *American Slavery, 1619–1877* (New York: Hill & Wang, 2003), 81; United States Population Census, 1790 and 1820, National Archives and Records Administration (Washington, DC); Wolf, *Race and Liberty in the New Nation*, 110–111.

General Assembly to sponsor” his legislation, “they saw that the moment for doing it with success was not yet arrived.” Lawmakers in Virginia feared that abolition in their state would be too complicated and chaotic to carry out in practice. With its relatively large (and steadily growing) slave population, it was feared that abolition in Virginia would lead to major disruptions to the social order. Virginia’s elites were afraid that freeing the Black population in its entirety would spark widespread crime and poverty—even the abolition schemes that were proposed therefore entailed resettlement outside of the state. Virginians also feared that abolition would cripple an already weakened tobacco economy, and that compensation schemes would prove too costly.¹⁵

The legal status of free Blacks in Virginia stood in stark contrast to that of free Blacks in Massachusetts, even before the relaxation of the manumission law in 1782. The Virginia legislature had already determined in 1779 that only “white persons” were eligible for citizenship within the Commonwealth, relegating free Blacks to non-citizenship from the outset (a stance that was upheld in subsequent legislative acts in 1783 and 1786, which repealed the 1779 law). As manumissions spiked across the state in the 1780s and 1790s, White southerners grew increasingly anxious about the growth of the free Black population in their own midst. This was especially so in the wake of the insurrection on Saint-Domingue, where free Blacks and slaves joined forces to oust or gruesomely eradicate the White slaveholding class, a terrifying prospect made even more terrifying by rumors of insurrection within Virginia itself. The infamous plot of Gabriel Prosser, a manumitted blacksmith who attempted to organize a major slave rebellion in the Richmond area in the summer of 1800, convinced many White southerners that free Blacks formed a potential threat to their society. Such fears coincided with the cotton revolution of the southern interior, the rise of a lucrative domestic slave trade, and the opening of new economic prospects for slavery in Virginia. The fading of the revolutionary era and the transition to the antebellum period witnessed a conservative backlash throughout the southern states, characterized by an obsessive recommitment to slavery and renewed attempts to crack down on the free Black population, check its growth, prevent the entry of free Blacks from other states, and close the doors to manumission.¹⁶

15 Manisha Sinha, *The Slave's Cause: A History of Abolition* (New Haven: Yale University Press, 2017), 91–92; Thomas Jefferson quoted in Gary B. Nash, *Race and Revolution* (Lanham: Rowman & Littlefield, 1990), 15 (quote); Anne E. Siemer, “Henry Laurens and Robert Carter III: The Failure of Abolition in the Federal Era” (PhD diss., Drew University, 2010); Pargas, *Freedom Seekers*, ch. 1.

16 James Sidbury, *Ploughshares into Swords: Race, Rebellion, and Identity in Gabriel's Virginia*,

The backlash commenced even before the turn of the new century. Already barred from political participation and the right to vote, the Virginia legislature enacted a series of restrictive laws concerning free Blacks starting in the 1790s, aimed at denying their full membership in free society. The state prohibited the entry of free Blacks from other states as early as 1793; in that year it also required free Blacks to carry at all times a register of their freedom obtained from the city or county in which they resided. In 1806 it passed a new manumission law that required all freed slaves to leave the state within twelve months of manumission—a virtually unenforceable requirement that few actually followed and that thus resulted in the proliferation of a free Black population living in a curious legal situation whereby they had freedom certificates but were illegal residents and thus potentially reenslavable. Throughout the antebellum period various laws were passed that prohibited free Blacks from learning how to read and write; prohibited them from owning weapons; barred them from participating in public performances; restricted them from selling various goods (including agricultural goods without certificates from Whites testifying they were not stolen); restricted them from working as barbers; barred or restricted them from other professions in which they were not trusted or where they were considered in competition with Whites (sometimes requiring certificates from “respectable whites” testifying to their character), such as branch pilots, fisherman and oystermen in the Chesapeake Bay; restricted free Black spatial mobility and imposed curfews; revoked the rights of free Blacks accused of non-felonies to a trial by jury; imposed physical punishments for non-felonies such as public whipping that were not applicable to Whites; and at various times imposed the punishment of reenslavement and sale—including sale beyond the borders of the United States—for crimes that included illegal residency (remaining in the state more than twelve months after manumission), stealing, infanticide, manslaughter, murder, and arson.¹⁷

1730–1810 (New York: Cambridge University Press, 1997); Sinha, *The Slave's Cause*, 92–95; Kolchin, *American Slavery*, ch. 3; Viola Franziska Müller, “Cities of Refuge: Slave Flight and Illegal Freedom in the American Urban South, 1800–1860” (PhD diss., Leiden University, 2020), 26–27; Wolf, *Race and Liberty*.

- 17 James Campbell, *Slavery on Trial: Race, Class, and Criminal Justice in Antebellum Richmond* (Gainesville: University Press of Florida, 2010), 148–150; “An ACT to amend the several laws concerning slaves,” (1806), in *The Statutes at Large of Virginia, from October Session 1792, to December Session 1806*, comp. Samuel Shepherd (Richmond: n.p., 1836), 252; Sinha, *The Slave's Cause*, 86, 94; Masur, *Until Justice Be Done*, 55; Richard H. Smith, *Accomack County Virginia Free Negro Records: Register of Free Negroes 1807–1863 and List of Free Negroes 1804* (Woodsboro: Firewood Treasures, 2007); Accomack County, Virginia, “List of Free Persons of Colour, who have been sentenced to transportation, &c.” (1823–1827); Accomack County

The latter placed free Blacks not only in a position of non-citizenship but indeed potential non-personhood—a terrifying prospect that was on occasion applied throughout the antebellum period. Freedom from slavery was indeed considered a privilege rather than a right for free Black people living in Virginia. Between 1823 and 1827, Accomack County alone revoked the freedom of 44 free Black people—all of whom were sentenced to enslavement and transportation beyond the borders of the United States—for crimes that included larceny, rape, robbery, arson, and infanticide. Periodic raids and crackdowns on illegal free Black residents in the antebellum period led to the reenslavement of manumitted people throughout the state. Moreover, free Black people in Virginia were constantly at risk of being picked up and reenslaved as fugitive slaves. The City Sergeant Jail Record for Richmond for the period 1841–1846 reveals that during that five-year span some 97 free Black people were arrested upon the presumption that they were runaways, but released upon proving their freedom and legal residence. It also shows that presumed fugitive slaves whose owners never came to claim them (often free Blacks living illegally in the state) were usually auctioned off to pay for jail expenses.¹⁸

Free Blacks in antebellum Virginia found themselves in a legal no-man's land between slavery and freedom—they were neither slaves, nor free Whites, nor aliens, the only legal classifications recognized in public jurisprudence. Most White Virginians were convinced that freedom and Blackness were incompatible and potentially dangerous. Free Blacks were considered a nuisance, a danger, and even an illegal category of people who should either be reenslaved en masse or recolonized in Liberia. By 1851 manumissions had been prohibited altogether. Although Virginia's racial restrictions were never enforced consistently, their sporadic enforcement and the ever-looming threat of their enforcement cast long shadows over vulnerable free Black communities throughout the state. Organized collective resistance was virtually impossible. As non-citizens and non-members of the politics in which they resided, free Black participation in antebellum Virginia's body politic was largely absent. With criticism of slavery heavily censored and dangerous, neither a free Black nor interracial civil rights movement ever emerged in Virginia, as it did in many

Minute Book (1825), pp. 181–183. My thanks to Christine Mertens for making these records available to me.

18 Viola Franziska Müller, *Escape to the City: Fugitive Slaves in the Antebellum Urban South* (Chapel Hill: University of North Carolina Press, 2022), 67–68; Pargas, *Freedom Seekers*, 109; City Sergeant Jail Records, 1841–1846, compiled and transcribed in Nancy Frantel, *Richmond, Virginia Uncovered: The Records of Slaves and Free Blacks Listed in the City Sergeant Jail Register, 1841–1846* (Richmond: Heritage Books, 2010). See also -Wolf, *Family Bonds*.

of the northern states. Free Black people essentially relied on three overarching strategies to navigate the perilous legal landscape of racial democratic Virginia. First, they *ignored* restrictions on their residency, mobility, and performance of various occupations. Historians have recently revealed the extent to which free Black people in Virginia ignored the 1806 expulsion law, mobility laws, and restrictions on the exercise of various occupations. Living in the shadows indeed became a common *modus operandi* for free Black people living throughout the state. Second, they sought access to both the government and justice system by *petitioning* the state legislature for individual exemptions from legal restrictions, and in some cases utilizing the courts to protect themselves against abuses to their bodies and property. The Race and Slavery Petitions Project database contains hundreds of petitions filed by free Black people living in Virginia during the antebellum period, especially from those who sought exemptions for the 1806 expulsion law. Most based their arguments on the good character of the petitioner (and often their families), and sometimes included affirming testimonies from upstanding White patrons. This was hardly a successful strategy, however, as the overwhelming majority of these petitions were rejected by the state legislature. Scholarship by historians such as James Campbell has also illuminated how free Black people utilized the court system to affirm rights and protections that included theft and physical abuse, including those perpetrated by White people, sometimes to limited success. And third, they *coordinated* collective welfare and social improvement through active church communities, especially in urban areas such as Richmond and Petersburg, which provided members with support and networks that facilitated their navigation through what was otherwise an extremely hostile environment.¹⁹

The development of Ohio into a highly contested hybrid democratic state (that eventually moved in the direction of a civic democratic state) was also closely tied to discussions about slavery, despite its origins within the federal Northwest Territory, where slavery had been prohibited by Congress in 1787, years before statehood was granted in 1803. As the first state to be organized from this massive tract of land, ceded to the United States by Great Britain in the Treaty of Paris in 1783, Ohio constituted from the outset both an attractive frontier for settlers from neighboring Pennsylvania and Virginia—its popula-

19 Müller, *Escape to the City*, 59–77; Pargas, *Freedom Seekers*, 84–88, 109–110; Samantha Seely, *Race, Removal, and the Right to Remain: Migration and the Making of the United States* (Chapel Hill: University of North Carolina Press, 2021); Race and Slavery Petitions Project, <https://dilas.uncg.edu/petitions/>; Welch, *Black Litigants in the Antebellum American South*; Campbell, *Slavery on Trial*, 146–185.

tion already numbered over 45,000 in 1800 and 60,000 when statehood was granted three years later, and would go on to become the third most populous state in the US by the late antebellum period—and an important borderland between the emerging “free states” and slavery. The influence of Virginia, with which it shared a long border along the Ohio River, weighed heavily in debates and discourse regarding the status of Black people in the early years of the state’s development, including during Ohio’s first constitutional convention in 1802. White Ohioans agreed to limit voting rights and office-holding to White men and prohibit Black participation in the state militia, but rejected all other proposals for discriminatory provisions in the state’s constitution of 1803—which, like Massachusetts, upheld the dictum that “all men are born equally free and independent, and have certain natural, inherent, and unalienable rights.” They also overwhelmingly opposed both slavery and long-term indentureships (widely perceived as slavery by another name), which were also prohibited by the state’s constitution. Freedom from slavery for Black people living there was considered a right, not a privilege. However, they broadly subscribed to the same fears held by White residents in other states at the turn of the nineteenth century, namely, that free Blacks constituted a threat to the social order and public peace, and that widespread settlement of Black people from other states should be discouraged. In Ohio, however, the flames of such fears were further fanned by the inflammatory discourse, strengthening commitment to slavery, and ever-tightening restrictions imposed upon free Blacks in neighboring Virginia in the 1790s and early 1800s. Developments across the border convinced many White Ohioans that the more committed Virginia became to slavery, and the more inhospitable it became to free Blacks, the more attractive Ohio might start to seem to runaway slaves and free Black migrants unless laws were passed to prevent their settlement.²⁰

The Ohio legislature responded to the perceived threat of Black migration from Virginia by passing a series of restrictions to Black settlement in 1804, even before Virginia’s 1806 expulsion law for manumitted Black people was passed. These ultimately developed into what became known as the “Black laws.” The

20 Ellen Eslinger, “The Evolution of Racial Politics in Early Ohio,” in Andrew R.L. Cayton and Stuart D. Hobbs, eds., *The Center of a Great Empire: The Ohio Country and the Early American Republic*, (Athens, OH: Ohio University Press, 2005); Matthew Salafia, *Slavery’s Borderland: Freedom and Bondage along the Ohio River* (Philadelphia: University of Pennsylvania Press, 2013), 15–42; Masur, *Until Justice Be Done*, 15–16; “Of Elections and Electors”, Constitution of the State of Ohio, 1802, Article IV, Section 1; “Bill of Rights” Article VIII, Section 2 (<http://www.ohiohistory.org/online/doc/ohgovernment/constitution/cnst1802.html>); Session of 22 November 1802, in: *Journal of the Convention of the Territory of the North-West of the Ohio* (Chillicothe, OH: N. Willis, 1802), 30, 37.

laws required Black (including “mulatto”) migrants to provide a certificate of their freedom to a clerk of court in their county of residence within two years of arrival. It also retroactively required the same of Black residents who already lived in Ohio, giving them only five months to provide proof of freedom. The registration process required a fee, placing a financial burden upon poor Black migrants and residents alike. Upon approval from the clerk of court, Black people were to receive a registration certificate, without which they were barred from seeking employment and thus denied the right to legitimately make a living; employers could be fined between \$10 and \$50 for hiring Black people who failed to produce a certificate. The law furthermore stipulated fines for harboring or concealing Black people who were not registered, in the assumption that such illegal residents were runaway slaves.²¹

In 1807, just after Virginia passed its 1806 law that curtailed manumissions and required Black people to leave the state within twelve months of manumission, the Ohio legislature passed another series of Black laws. The new legislation placed considerable new burdens upon free Blacks who wished to migrate there from other states, drastically increasing the registration fees and requiring that Black settlers obtain two or more “freehold sureties” (bonds) of \$500 from resident landowners. The bonds were not paid out directly to the state upon registration but guaranteed the “good behavior” as well as the financial support of Black migrants, should they ever become unable to support themselves. The 1807 laws also charged the Overseers of the Poor in each township with the responsibility of removing Black people who were found to be unable to support themselves or to have violated the registration laws. Finally, the new laws prohibited Black people from testifying in court in cases involving Whites, making African Americans vulnerable to all kinds of exploitation and violations at the hands of disingenuous White people. Decades later, the Ohio legislature enacted further laws hostile to Black residents, barring them from poor relief, public education, and jury duty in 1831, for example. By 1835, the Ohio Anti-Slavery Society lamented that the state’s Black laws had forced thousands of African Americans to live illegally, in poverty, and constantly on the move, as it was nearly impossible for them to gain legal residency in any township unless they found two freehold sureties willing to sponsor them. The

21 “An Act to Regulate Black and Mulatto Persons,” January 5, 1804; “An Act to Amend the Last Named Act ‘An Act to Regulate Black and Mulatto Persons,’” January 25, 1807, in Stephen Middleton, ed., *The Black Laws in the Old Northwest: A Documentary History*, (Westport, CT: Greenwood Press, 1992), 15–17; Stephen Middleton, *The Black Laws: Race and the Legal Process in Early Ohio* (Athens: Ohio University Press, 2005); Salafia, *Slavery’s Borderland*, 15–42; Masur, *Until Justice Be Done*, 16–17.

development of Ohio as a free state in the opening decades of the nineteenth century went hand in hand with relegating African Americans to second-class citizenship and denying them important rights under the guise of pursuing the public good and maintaining order.²²

Yet the Black laws were never the last word in the status of Black people in Ohio, however draconian they appeared. First, as in Virginia and Massachusetts, they were never consistently enforced, although the threat of their enforcement was the source of much anxiety for free Blacks living unregistered throughout the state. As in Virginia, African Americans broadly ignored residency restrictions and continued to move there from other states, purchase land, and in some cases even prosper as farmers and mechanics, among other occupations. Their numbers indeed doubled in the 1830s alone. More importantly, however, the state became a hotly contested site of Black citizenship and democracy due to an active and vociferous abolitionist and civil rights movement that aimed at both protecting fugitive slaves and securing full citizenship rights for African Americans, often operating against the backdrop of periodic race riots and racial violence. This stood in contrast to the experiences of free Black communities in Virginia but similar to those in Massachusetts, although the challenge in Ohio was greater because the restrictions were so much harsher there. The legal and moral arguments of Ohio activists and abolitionists throughout the antebellum period found an audience in the state's legislature and judiciary, including the state Supreme Court. Tangible successes were booked early on that chipped away at the effectiveness of the Black laws and at attempts to curtail Black freedom writ large, beginning with court cases related to the rights of enslaved people from the southern states who had crossed into free-soil Ohio. As early as the 1810s, the slaveholding states (especially neighboring Kentucky) were already complaining that Ohioans were refusing to send back fugitive slaves or allow slaveholders to travel with their slaves to the state. In 1817, the Ohio Supreme Court decided that an enslaved man from Kentucky who had traveled to Ohio to conduct his owner's business was free, and that indeed all Black people in Ohio were entitled to the presumption of freedom unless and until their bondage could be proved to the satisfaction of the state. The decision effectively flipped the burden of proof for slavery onto slaveholders, whereas in the South the burden was on Black people themselves to prove their freedom (by carrying freedom certificates with them

22 "Report on the Condition of the People of Color in the State of Ohio," in: *Proceedings of the Ohio State Anti-Slavery Convention* (April 1835); "Ohio Legislature: Report of the Committee on the Colored Population of Ohio," *The Scioto Gazette*, 25 January 1832; Middleton, *The Black Laws*, 7–41; Masur, *Until Justice Be Done*, 17–18, 87, 95, 187–188.

in public spaces). The presumption of freedom afforded to Black people in Ohio helped protect them from random seizures and (re)enslavement by southern slaveholders.²³

The Black laws themselves were also heavily challenged and chipped away at in the antebellum period. The legislature indeed discussed the repeal of the Black laws as early as 1816, and although it failed to do so, the Ohio Supreme Court limited the effectiveness of the law banning “black and mulatto” people from testifying in court in cases involving white persons five years later when it decided in 1821 that people of mixed race who were more than half White—for example those with only one Black grandparent, often referred to as “quadroons” and considered Black throughout the United States—were to be considered White before the law. The Court also consistently upheld the citizenship rights of these people in every arena throughout the antebellum period, including the right to vote, providing at least some “colored” people direct access to participatory democracy, as research by Van Gosse has shown.²⁴

White and Black activists and abolitionists across the state went further in the 1830s, establishing formal organizations, holding statewide and national conventions on both national abolition and Black civil rights, publishing newspapers and treatises, establishing churches and church-run schools, and tirelessly mobilizing mass petitions to the legislature calling for the repeal of the Black laws and for state support of public schools for Black children. Although it would take over a decade, their efforts would finally bear fruit in the 1840s. In 1841 the state Supreme Court clarified that Ohio was unequivocally to be considered free soil for fugitive slaves, arguing that slaves could not be claimed as slaves in a state where slavery did not exist in law (essentially nullifying the state’s commitment to fugitive slave laws and further protecting Black residents from reenslavement in the South). And by 1849—after decades of lobbying—the Ohio legislature passed a bill that repealed all laws that “enforce any special disabilities or confer any special privileges on account of color,” ending the prohibition of Black testimony in court cases involving Whites as well as the local registration requirement, and furthermore making Black children eligible for public education (in Black schools) and Black male taxpayers for the right to vote. Two racist restrictions remained on the books—one denying African Americans the right to sit on juries and the other making them ineligible for poor relief (and therefore subject to removal by township overseers of the poor if they became a public charge). These two statutes prevented Ohio from

23 Masur, *Until Justice Be Done*, 37–38; Middleton, *The Black Laws*, 42–73.

24 “Laws of Ohio—Free Blacks,” *Niles’ Weekly Register*, 17 April 1830; Masur, *Until Justice Be Done*, 39–40; Middleton, *The Black Laws*, 74–156; Gosse, *The First Reconstruction*, 491–542.

achieving full civic democracy in the antebellum period, but by 1849 Ohio was clearly on track toward becoming a civic democratic state, with African Americans inching ever closer to full citizenship rights and becoming included in the democratic body politic.²⁵

4 Conclusion

When the Taney Supreme Court declared in the 1857 Dred Scott case that Black people were not to be considered citizens in the constitutional sense, and therefore had no rights, it was *not* rubber-stamping a pre-existing legal and political consensus regarding the nature of Black citizenship rights (or rather lack thereof) throughout the United States. Quite the opposite. It was *imposing* racial democratic understandings of Black non-citizenship upon the entire union, including in civic and hybrid democratic states where free Black people were considered either full or second-class citizens, respectively. The federal nullification of state-level understandings of the relationship between Black freedom, citizenship, and democracy was indeed one of the main factors that made the decision so controversial, and why many northern states sought to effectively resist its implications for Black people residing in their states.²⁶

The experiences of free Black populations in the antebellum United States varied markedly across time and space because understandings of the relationship between Black freedom and citizenship and democracy varied widely across time and space. State borders mattered. In some states, free Black people had equal access to virtually all citizenship rights, were legally considered full members of the polis, and participants in post-revolutionary democracies. They could reside freely, were protected from (re-)enslavement, could partic-

25 Masur, *Until Justice Be Done*, 102–103, 185–188, 221–223; Middleton, *The Black Laws*, 74–262; “Report of the Select Committee of the Senate, On the Petitions of sundry Citizens, Praying the Repeal of certain Laws restricting the Rights of Persons of Color,” *The Philanthropist*, 20 March 1838; *Minutes of the State Convention of the Colored Citizens of Ohio* (Columbus: E. Glover, 1851); *Proceedings of the Convention of the Colored Freemen of Ohio* (Cincinnati: Dumas & Lawyer, 1852); *Official Proceedings of the Ohio State Convention of Colored Freemen* (Columbus: W.H. Day, 1853); *The Alien American*, 9 April 1853; *Herald of Freedom*, 2 June 1855.

26 Finkelman, “Scott v. Sandford,” 3–48; Don E. Fehrenbacher, *The Dred Scott Case: Its Significance in American Law and Politics* (New York: Oxford University Press, 1978); Earl M. Maltz, *Dred Scott and the Politics of Slavery* (Lawrence: University of Kansas Press, 2007).

ipate in the economy, had full access to the justice system, and even voted in local elections. In other states, free Black people were denied most citizenship rights, were not considered members of the polis, and could not participate in post-revolutionary democracies. They could not reside freely, were not protected from (re-)enslavement, were restricted in their economic participation, did not have full access to the justice system, and were denied participation in democratic government. In still other states, free Black populations experienced a combination of the above-mentioned rights and restrictions. Wherever they lived, free Black people found themselves constantly adapting to and renegotiating the terms of their freedom in civic, racial, and hybrid democracies across the union, along the fluid spectrum of citizenship and democracy that characterized the racial landscapes of antebellum America.

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