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WHAT TO THE NATION IS THE AMERICAN SOLDIER? SHIFTING CONCEPTIONS OF SERVICE, RIGHTS, AND BELONGING IN THE CIVIL WAR

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On Memorial Day and Veterans' Day in the United States, flags fly and appreciation flows. Veterans receive private recognition, but also state-mandated and -supported benefits, ranging from healthcare to preferential hiring practices. Veteran status also has political salience. The current House of Representatives has eighty veteran members (18.4%), and seventeen Senators served in the military.¹ While this share is “near a record low,” veterans are still overrepresented.² The Census Bureau estimated that about 6.4% of the civilian population over age eighteen were veterans in 2021.³ For more than 150 years, service members and veterans have had readier access to U.S. citizenship.⁴

While a link between military service and citizenship dates back to the Revolutionary era,⁵ military service in the antebellum period was not so clearly linked to honor and civic membership. The Civil War was a key turning point in setting the United States firmly on a path toward valorizing service in the national armed forces. As the Army and Navy fought the nation's largest existential war, important public figures discussed the meaning of military service, who should be required to serve, and—with regard to African Americans—who should be allowed to serve. As this Essay will illustrate, Frederick Douglass advocated for Black military service as a

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1. Drew Desilver, *New Congress Will Have a Few More Veterans, but Their Share of Lawmakers Is Still Near a Record Low*, PEW RSCH. CTR. (Dec. 7, 2022), <https://www.pewresearch.org/fact-tank/2022/12/07/new-congress-will-have-a-few-more-veterans-but-their-share-of-lawmakers-is-still-near-a-record-low/>.

2. *Id.*

3. *Veterans Day 2022: November 11*, CENSUS BUREAU (Oct. 26, 2022), <https://www.census.gov/newsroom/facts-for-features/2022/veterans-day.html>.

4. HOLLY STRAUT-EPPSTEINER & LAWRENCE KAPP, CONG. RSCH. SERV., IF12089, U.S. CITIZENSHIP THROUGH MILITARY SERVICE AND OPTIONS FOR MILITARY RELATIVES (2022), <https://crsreports.congress.gov/product/pdf/IF/IF12089>; see *Naturalization Through Military Service*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/military/naturalization-through-military-service> (last visited Sept. 3, 2023).

5. Meyer Kestnbaum, *Citizenship and Compulsory Military Service: The Revolutionary Origins of Conscription in the United States*, 27 ARMED FORCES & SOC'Y 7, 9 (2000).

means of advancing Black political incorporation, and in doing so, he both confirmed the growing sense that military service was a key component of civic membership and that participation in military service marked one as a civic member entitled to rights.⁶ As the war continued, Abraham Lincoln increasingly recognized the need for more manpower and came to see that the incorporation of Black men into the military was a practical necessity.⁷ As the American military saved the Union, Lincoln and those around him embraced the soldier as a crucial contributor to national survival worthy of recognition for his service, regardless of race.

The military advanced state-building in the antebellum years, but not everyone who served had equal standing or worth. While volunteer state militias were respected as honorable civic service, “[t]he prevailing American view was that the man who chose service in the regular army was at best imprudent and at worst a shiftless person seeking only to benefit from a kind of welfare program.”⁸ This reflected republican distrust of the American army, although it was kept small, growing only to address immediate combat needs and shrinking in the aftermath, as Congress resisted building a professional standing army. People perceived the regular army as atomistic and transactional, and enlistees were not necessarily afforded honor and respect.⁹ Yet state militia service remained an important element of civic incorporation and conferred political benefits on its members throughout the antebellum era, reflecting republican virtue and incorporating patriotism.¹⁰

During this period, states harboring free Black residents restricted the right and obligation of militia service to white men. While a few states initially enrolled Black men, explicit exclusion soon prevailed.¹¹ As political struggles over slavery increased, Black men pressed Northern states to allow Black service, and when thwarted, organized their own militias in New York, Ohio, Massachusetts, and Rhode Island, as well as in Canada.¹² The exclusion of Black state residents from the Army and state militias and Southern

6. *See supra* Part I.

7. *See supra* Part II.

8. Dale Richard Steinhauer, “Sogers”: Enlisted Men in the U.S. Army, 1815-1860, at 1 (1992) (Ph.D. dissertation, University of North Carolina at Chapel Hill) (ProQuest), <https://www.proquest.com/docview/303990498?pq-origsite=gscholar&fromopenview=true>.

9. *Id.* at 5.

10. *Id.* at 313.

11. Jeffrey R. Kerr-Ritchie, *Rehearsal for War: Black Militias in the Atlantic World*, 26 *SLAVERY & ABOLITION* 1, 9 (2005).

12. *Id.* at 12. At the beginning of the war, federal law barred Black men from serving in the state militias or the U.S. Army, and no government officials initially demanded a change to the law. John David Smith, *Let Us All Be Grateful That We Have Colored Troops That Will Fight*, in *BLACK SOLDIERS IN BLUE: AFRICAN AMERICAN TROOPS IN THE CIVIL WAR ERA* 1, 9 (John David Smith ed., 2005).

opposition to their naval service prevented potentially dangerous groups of individuals from obtaining weapons and military training.¹³ But it also barred access to the bargain of service for citizenship and civic belonging.

When the Civil War began, Frederick Douglass and Abraham Lincoln debated Black military service and its meaning.¹⁴ The debate addressed Black men's incorporation in the U.S. military but also reflected how the meaning of military service and the rights associated with it were changing. Douglass advocated Black military service to extract citizenship for both free Black citizens in the North and those whom an abolitionist war would free. Lincoln entered the war holding conventional white views about Black unfitnes for full civic membership in the nation,¹⁵ but ultimately endorsed Black military service and Douglass's recommendation of votes for soldiers. The trajectory toward accepting Black volunteers was frustratingly slow for advocates, as several of Lincoln's generals pressed for incorporation only to meet with refusal and silence. Not until the final Emancipation Proclamation was released in January 1863 was Lincoln fully on board, despite the strong advocacy of Douglass and others from the early days of the war.

Tracing Lincoln's and Douglass's positions on Black military service in the time between the war's outbreak and emancipation illustrates how Black military incorporation shifted the meaning of the war and the rights associated with service. As the analysis to come will show, Douglass's rhetoric framed Black military service as essential for national survival, thereby centering the military and its members as heroic figures worthy of respect and state-based civic recognition. Because he was pressing for Black incorporation into the national armed services, he necessarily elevated this form of service, flattening the previous distinction between state militias and the Army and appropriating the civic virtue attributed to militia service for Army membership in America's most critical struggle.

The men only met three times. The first was in August 1863, six months after the Emancipation Proclamation. In August 1864, they met again, and "Lincoln asked Douglass to undertake covert efforts to free slaves if Lincoln lost re-election."¹⁶ Their final meeting was shortly before Lincoln's assassination. Douglass, initially critical of Lincoln, ultimately supported

13. Robert J. Cottrol & Raymond T. Diamond, *The Second Amendment: Toward an Afro-Americanist Reconsideration*, 80 GEO. L.J. 309, 336–342 (1991).

14. See *infra* Part I (discussing Frederick Douglass); *infra* Part II (discussing Abraham Lincoln).

15. J. Blaine Hudson, *Abraham Lincoln: An African American Perspective*, 106 REG. KY. HIST. SOC'Y 513, 515–18, 522–25 (2008).

16. Katherine Scott Sturdevant & Stephen Collins, *Frederick Douglass and Abraham Lincoln on Black Equity in the Civil War: A Historical-Rhetorical Perspective*, 73 BLACK HIST. BULL. 8, 8 (2010).

him, and Lincoln, who bridled at Douglass's early criticisms, entrusted him with securing emancipation, even by extralegal means.¹⁷

I. DOUGLASS'S RATCHET, 1861–1863

Douglass's first public reaction to Lincoln was not positive. He announced in July 1860 that while he hoped for a Republican victory in the presidential election, he would vote for abolitionist Gerrit Smith, communicating to Smith in a letter "I cannot support Lincoln."¹⁸ He was left with even less trust in the Republican Party after the election, when voters in his home state of New York supported Lincoln while simultaneously refusing to repeal the state constitution's provision that required Black but not white individuals to own at least \$250 to be eligible to vote.¹⁹ Lincoln's conciliatory inaugural address enraged Douglass, and he gave little credit to Lincoln's effort to maintain a fine line between moral disapproval of slavery and legal impotence to challenge it.²⁰

When the war began, Douglass immediately perceived that the great conflict was not over disunion, but slavery, and he quickly drew links between slavery and Black military service. He argued in February 1861 that the South, at least, fully understood the stakes: "[T]hey can accept no compromise, no concession, no settlement that does not exalt slavery above every other interest in the country."²¹ He saw the only paths forward as either the destruction of slavery or allowing the South to establish the evil in its own national space.²² In May, after sustained fighting had begun, Douglass made demands for immediate emancipation that linked emancipation to Black enlistment.²³ The war could be swiftly won by pursuing both objectives: "*Let the slaves and free colored people be called into service, and formed into a liberating army, to march into the South and raise the banner of Emancipation among the slaves.*"²⁴ He justified this by slaveholders' use of slaves for military labor and his prediction that they would press slaves into

17. *Id.* at 9–10.

18. JAMES OAKES, *THE RADICAL AND THE REPUBLICAN: FREDERICK DOUGLASS, ABRAHAM LINCOLN, AND THE TRIUMPH OF ANTISLAVERY POLITICS* 89 (2007).

19. *Id.* at 118.

20. *Id.* at 132.

21. Frederick Douglass, *The Union and How to Save It*, UNIV. OF ROCHESTER FREDERICK DOUGLASS PROJECT (Feb. 1861), <https://rbscp.lib.rochester.edu/4375>.

22. *Id.*

23. Frederick Douglass, *How to End the War*, UNIV. OF ROCHESTER FREDERICK DOUGLASS PROJECT (May 1861), <https://rbscp.lib.rochester.edu/4373> [hereinafter Douglass, *How to End the War*].

24. *Id.*

defending the Confederacy. “[T]en thousand black soldiers” could be mustered in a month to march, inducing all slaves to rebel.²⁵

Asked what African Americans would do in the crisis, Douglass answered, “[W]ould to God you would let us do something! We lack nothing but your consent.”²⁶ Black men, free and enslaved, would happily “serve and suffer for the cause of freedom and free institutions.”²⁷ This formulation linked slavery’s destruction to a broader commitment to defend American values. He tied Black service to a national willingness to embrace abolitionist ideology; until this happened, “they [the United States] don’t deserve the support of a single sable arm, nor will it succeed in crushing the cause of our present troubles.”²⁸

Douglass’s remarks resonated with military developments driven by the War Department and Congress. In May 1861, General Benjamin Butler, commanding U.S. troops in Virginia, declared that escaped slaves were contraband not subject to return to the Confederacy, a small but critical first step toward emancipation.²⁹ Congress passed the First Confiscation Act in August 1861.³⁰ Military commanders solicited individuals who had emancipated themselves and employed them “as cattle drivers, stevedores, pioneer laborers, and in other support roles.”³¹ By February 1862, Douglass’s rhetoric had strengthened. He emphasized African Americans’ loyalty in contrast to other ethnic stock: “[W]hile treason and rebellion have counted upon aid and comfort all over the North . . . no rebel or traitor has dared look at the free colored men of the North, but as an enemy.”³² He excoriated the federal government’s refusal to confront slavery. The legal fiction that former slaves who had emancipated themselves were contraband of war was disgraceful: Contraband was “a name that will apply better to a pistol, than to a person.”³³ And equivocation on the question of abolition under guise of preserving the South’s constitutional rights was “one of the most contemptible features of the crisis.”³⁴

His fixed lodestar was the North’s identification with freedom. Freedom implied rights as the center of “our Northern social system” and was expansive: “Free speech, free soil, free men, free schools, free inquiry, free

25. *Id.*

26. *Id.*

27. *Id.*

28. *Id.*

29. Smith, *supra* note 12, at 11.

30. Confiscation Act of 1861, ch. 60, 12 Stat. 319.

31. Smith, *supra* note 12, at 12.

32. Frederick Douglass, *The Reasons for Our Troubles*, UNIV. OF ROCHESTER FREDERICK DOUGLASS PROJECT (Jan. 1862), <https://rbscp.lib.rochester.edu/4381>.

33. *Id.*

34. *Id.*

suffrage, equality before the law, are the natural outgrowths of freedom.”³⁵ And he clearly incorporated Black armed struggle as a means of achieving this freedom: “The only road to national honor, and permanent peace to us, is to meet, fight, dislodge, drive back, conquer and subdue the rebels.”³⁶

He criticized the Union’s lack of commitment to total victory in light of the crisis and the ideal vision of statehood that awaited. The Union response “struck wide of the mark, and very feebly withal.”³⁷ Why? The Union had refused to enlist former slaves. Inverting views of Black soldiers as weak and untrustworthy, he feminized white forces: “We are striking the guilty rebels with our soft, white hand, when we should be striking with the iron hand of the black man, which we keep chained behind us.”³⁸ This degraded the nation’s nobility, “robb[ing] our cause of half its dignity in the eyes of an on-looking world.”³⁹

This refusal rendered the government contemptible and weak for not acknowledging the Black race’s manhood. In addition to endangering the war effort, this failure harmed the race: “[I]n denying them the privileges to fight for their country, they have been most deeply and grievously wronged.”⁴⁰ Invoking George Washington and Andrew Jackson, he asked if George McClellan or Henry Halleck, generals of the Union army, were better than these acknowledged heroes who had fought “side by side with Negroes.”⁴¹

Congress recognized the need and moved forward, passing the Second Confiscation Act and the Militia Act in July 1862, which “directly linked emancipation to military enlistment.”⁴² The Militia Act reversed the policy of racial exclusion from military service, allowing the Army to employ freed Black people to labor for pay in cash and rations. Lincoln balked, concerned about losing the support of Kentucky, but states advocated in the summer of 1862, offering to recruit Black regiments.⁴³ Secretary of War Edwin Stanton organized a recruitment and enrollment process, mounting a regiment by October 1862.⁴⁴ General Benjamin Butler enrolled the Louisiana Native Guards, and by November had mustered three regiments.⁴⁵

35. *Id.*

36. *Id.* (emphasis omitted).

37. *Id.*

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.*

42. Smith, *supra* note 12, at 13; *see* Confiscation Act of 1862, ch. 195, 12 Stat. 589; Militia Act of 1862, ch. 201, 12 Stat. 597

43. Smith, *supra* note 12, at 17.

44. *Id.* at 22.

45. *Id.*

Through these developments, Douglass exploited the growing gap between Lincoln and his generals on how to pursue the war and Black demands to serve. Accusing Lincoln of “seem[ing] to possess an ever increasing passion for making himself appear silly and ridiculous,” he likened Lincoln’s careless style to “the gossiping manner in which a loquacious old woman discusses her neighbors and her own domestic affairs.”⁴⁶ More seriously, he accused Lincoln of being “a genuine representative of American prejudice and Negro hatred and far more concerned for the preservation of slavery, and the favor of the Border Slave States, than for any sentiment of magnanimity or principle of justice and humanity.”⁴⁷ This critique targeted Lincoln’s flirtations with colonization as a solution to the American dilemma—a plan the President described in an address directed to Black elites.⁴⁸

Lincoln’s timidity, for Douglass, poorly matched Congress’s manly stance. He expressed disgust with the Administration’s “tenderness” and pressed Congress to drive policy directly.⁴⁹ Congressional action invited Lincoln to emancipate and arm slaves. Lincoln, however, “has not been able yet to muster courage and honesty enough to obey and execute that grand decision of the people.”⁵⁰ He slyly questioned whether Lincoln, in his remarks to the Black elites, was condescending to them by adopting an “exceedingly plain and coarse” style or was simply incapable of doing better.⁵¹

Douglass applauded the preliminary Emancipation Proclamation, although he saw it as driven by simple common sense and the necessities of war. Douglass framed the Proclamation as a cleansing device that would purge pro-slavery interests and energize anti-slavery forces, redefining loyalty as a commitment to the anti-slavery position.⁵² The promise of emancipation, however, required incorporating the most loyal anti-slavery forces. Douglass used “we” strategically to emphasize full incorporation. “We,” he declared, “have full power to put down the rebellion.”⁵³ His “we” presumed full participation on equal terms. He called out the role of Black men specifically:

46. Frederick Douglass, *The President and His Speeches*, UNIV. OF ROCHESTER FREDERICK DOUGLASS PROJECT (Sept. 1862), <https://rbscp.lib.rochester.edu/4387> [hereinafter Douglass, *The President and His Speeches*].

47. *Id.*

48. See OAKES, *supra* note 18, at 189–92.

49. Douglass, *How to End the War*, *supra* note 23; see OAKES, *supra* note 18, at 160–62.

50. Douglass, *The President and His Speeches*, *supra* note 46.

51. *Id.*

52. Frederick Douglass, *Emancipation Proclaimed*, UNIV. OF ROCHESTER FREDERICK DOUGLASS PROJECT (Oct. 1862), <https://rbscp.lib.rochester.edu/4406>.

53. *Id.*

Let only the men who assent heartily to . . . the anti-slavery policy of the Government be lifted into command; let the black man have an arm as well as a heart in this war, and the tide of battle . . . will steadily set in our favor.⁵⁴

He called on “every friend of the long enslaved bondman” to advocate for emancipation using “voices and votes” to “forever extinguish that latent and malignant sentiment at the North, which . . . has systematically sought to paralyze the national arm in striking down the slaveholding rebellion.”⁵⁵ The framing incorporated free Black people in the North, invited the incorporation of freed or soon-to-be-freed persons in the South, and pressed for arming Black men to strike slavery’s death blow.

Formal authorization finally came in the final Emancipation Proclamation in January 1863, although the Army had already organized five regiments of Black enlistees in South Carolina, Louisiana, and Kansas.⁵⁶ But with Lincoln on board, enlisting Black troops became the focal point of the presidential administration’s emancipation program.⁵⁷ Soon, most troops mustered earlier under the auspices of state volunteer militias were designated as U.S. regiments.⁵⁸

Douglass’s most comprehensive statements on Black military service came in March 1863, when he issued a powerful and personal solicitation for volunteers.⁵⁹ He began by noting that he had been right in predicting that the nation would ultimately turn to Black volunteers for rescue. He motivated Black volunteerism, identifying three aims: the nation’s salvation, the re-establishment of peace, and the securing of Black rights. It was crucial that Black volunteers be fully incorporated, since “[l]iberty won by white men would lose half its luster.”⁶⁰ He linked the fate and prospects of Northern free Black people to the enslaved and newly liberated people of the South:

By every consideration which binds you to your enslaved fellow-countrymen . . . ; by all the ties of blood and identity which make us one with the brave black men now fighting our battles in Louisiana and in South Carolina, I urge you to fly to arms, and smite with death the power that would bury the government and your liberty in the same hopeless grave.⁶¹

54. *Id.*

55. *Id.*

56. Smith, *supra* note 12, at 20.

57. *Id.* at 22–23.

58. *Id.* at 27.

59. Frederick Douglass, *Men of Color, to Arms!*, UNIV. OF ROCHESTER FREDERICK DOUGLASS PROJECT (Mar. 21, 1863), <https://rbscp.lib.rochester.edu/4372>.

60. *Id.*

61. *Id.*

Douglass emphasized both the need to fight for liberty and to secure recognition of Black soldiers as equals. He promised that “you will receive the same wages, the same rations, the same equipments, the same protection, the same treatment, and the same bounty, secured to the white soldiers.”⁶² Furthermore, he promised invested officers who would “accord to you all the honor you shall merit by your valor, and see that your rights and feelings are respected by other soldiers.”⁶³ He invoked prior Black militarized resistance to slavery, describing Shields Green and Copeland, associates of Denmark Vesey, Nathaniel Turner, and John Brown, as “glorious martyrs for the cause of the slave.”⁶⁴ This move defined the American project of violently defending liberty as one with the specific narrative of overcoming slavery.

Douglass followed this pitch with a second in April 1863.⁶⁵ The April pitch linked masculinity, citizenship, and service to the capacity to secure and defend one’s own rights, as well as underlining the national commitment to end slavery. Why enlist? “You are a man, although a colored man.”⁶⁶ Moreover, “You are . . . not only a man, but an American citizen,” which entailed an “earnest desire to fulfil any and every obligation which the relation of citizenship imposes.”⁶⁷ While the formal constitutional rejection of *Dred Scott v. Sandford*’s⁶⁸ denial of Black citizenship would not come until the Fourteenth Amendment, Douglass presented Black citizenship as a natural and irresistible consequence of national service. The government’s previous refusal to enlist Black soldiers was a dishonor, but now that they were welcomed, the honor had to be accepted to activate reciprocity. His vision of Black service to the nation implied the nationalization of citizenship and the elevation of national military service as a marker of civic belonging and obligation. A robust response to the call would also help the war effort by disheartening the South.

More practically, enlistment would serve the long-term interests of Black individuals. “You should enlist to learn the use of arms, to become familiar with the means of securing, protecting and defending your own liberty.”⁶⁹ By fighting, Black men would stave off later attempts to threaten their rights by displaying the capacity to defend themselves. Volunteering

62. *Id.*

63. *Id.*

64. *Id.* See generally ANTISLAVERY VIOLENCE: SECTIONAL, RACIAL, AND CULTURAL CONFLICT IN ANTEBELLUM AMERICA (John R. McKivigan & Stanley Harrold eds., 1999).

65. Frederick Douglass, *Why Should a Colored Man Enlist?*, UNIV. OF ROCHESTER FREDERICK DOUGLASS PROJECT (Apr. 1863), <https://rbscp.lib.rochester.edu/4396> [hereinafter Douglass, *Why Should a Colored Man Enlist?*].

66. *Id.*

67. *Id.*

68. 60 U.S. (19 How.) 393 (1857).

69. Douglass, *Why Should a Colored Man Enlist?*, *supra* note 65.

would also change perceptions of the “long enslaved and despised race” by casting off servility and destroying the myth of humble submission to slavery due “to a lack of manly courage.”⁷⁰ Enlistment would uplift the enlistee, making him a “man among men You will stand more erect, walk more assured, feel more at ease, and be less liable to insult than you ever were before.”⁷¹ Military service would make the United States Black men’s country by making them equal “with all other men born in the country or out of it.”⁷² Finally, Douglass’s vision of military service would remake the nation. By fighting, Black men would prevent any compromise on slavery and with victory, the United States would become “a country where you and your children after you can live in comparative safety.”⁷³

Douglass leveraged enlistment for full equality. He simultaneously acknowledged that inequality still existed, even for those who served, but promoted military service as a moral obligation.⁷⁴ He acknowledged at the end of 1863 that the Union had not fully embraced an abolitionist war, but pressed the idea that the Union could not be preserved without full abolition.⁷⁵ Full abolition encompassed more than slavery’s end, and ending slavery would require uprooting the institution’s northern tentacles.⁷⁶ For Douglass, abolition would be incomplete “until the colored man is admitted a full member in good and regular standing in the American body politic.”⁷⁷ Black men could not be entrusted to rescue the nation in times of trouble and then excluded from the full fruits of civic membership.

Voting was paramount for advocates for Black rights, especially with the free Black community in New Orleans, which had led the way by supplying some of the first Black troops.⁷⁸ To claim that freed slaves and Black citizens were not suitable voters, Douglass detailed “what amount of baseness, brutality, coarseness, ignorance, and bestiality could find its way into the body politic,” painting an ugly portrait of “Pat, fresh from the Emerald Isle,” implied to be too drunk to stand without the assistance of his friends (an implication made explicit later in the speech).⁷⁹ Military service

70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.*

74. OAKES, *supra* note 18, at 202–03..

75. Frederick Douglass, *Our Work is Not Done*, UNIV. OF ROCHESTER FREDERICK DOUGLASS PROJECT (Dec. 1863), <https://rbscp.lib.rochester.edu/4403> [hereinafter Douglass, *Our Work Is Not Done*].

76. *Id.*

77. *Id.*

78. Eric Foner, *Rights and the Constitution in Black Life During the Civil War and Reconstruction*, 74 J. AM. HIST. 863, 867 (1987).

79. Douglass, *Our Work Is Not Done*, *supra* note 75.

was a clear qualifier for the ballot: “If he [the Black man] knows enough to take up arms in defence of this Government, and bare his breast to the storm of rebel artillery, he knows enough to vote.”⁸⁰

Anticipating Reconstruction-Era debates among Republicans, Douglass asserted that the South’s freedmen, especially the veterans, would be critical to re-establishing republican institutions after the war: “You will need the black man there, as a watchman and patrol; and you may need him as a soldier. . . . [L]et the Negro have a vote.”⁸¹ He advocated not only for the franchise, but also for Black representation in Congress. He closed by further shifting the meaning of the war. Previously he had argued that only abolition could save the Union. He returned to the theme of saving the Union, but “saving” now encompassed transformation. The old Union was dead and the Union for which Black men (and by extension all Union soldiers) were fighting was “something incomparably better.”⁸² This union encompassed “unity of idea, unity of sentiment, unity of object, unity of institutions, in which there shall be no North, no South, no East, no West, no black, no white, but a solidarity of the nation, making every slave free, and every free man a voter.”⁸³

To summarize the foregoing analysis, overall, Douglass began by reframing the war as a struggle against slavery that would justify Black military service to fatally wound the institution. As circumstances changed, so did Douglass’s rhetorical tactics. Douglass identified Lincoln as the critical actor and advocated for using Black troops, but also linked Black service to worthiness of liberty and rights. He emphasized Black soldiers’ manly capacity, whether recruited from among Northern free populations or Southerners recently liberated or escaped from slavery. Ever pragmatic, Douglass seized on the Emancipation Proclamation as both a national end to slavery and as leverage toward equality, shifting toward aggressive recruitment of men willing to serve. He then pitched service to all audiences as showing that Black men were ready to be entrusted with other civic responsibilities and that the new Union arising from the war’s successful conclusion would rightfully be a multiracial democracy.

II. LINCOLN WORKS THE ANGLES, 1861-1863

While Douglass’s framings and tactics shifted over time, his position on Black military service and its relationship to Black citizenship and rights remained consistent throughout the war. In contrast, Lincoln’s posture

80. *Id.*

81. *Id.*

82. *Id.*

83. *Id.*

toward Black military service evolved over the course of the war. As a candidate and newly elected President, Lincoln publicly expressed his personal objections to slavery while affirming the impossibility of rendering them political and social equals, and he continued to flirt with gradual emancipation and colonization as a solution to the dilemma.⁸⁴ Historian Michael Burlingame noted that, while Lincoln knew that Black sailors were serving aboard union naval vessels in fall 1861, he remained silent on the issue, prioritizing preventing the border states that still maintained slavery from seceding.⁸⁵ As Eric Foner has explained, “he was not an abolitionist or a Radical Republican and never claimed to be one,” and while Foner and other scholars have traced the apparent shifts in his racial beliefs as the war progressed, “he never became a principled egalitarian in the manner of abolitionists such as Frederick Douglass and Wendell Phillips or Radical Republicans like Charles Sumner.”⁸⁶ Yet over the course of the war, as the analysis below illustrates, he both shifted his policy prescriptions pragmatically toward abolition and Black enlistment to strengthen the Union’s hand, and he moved personally toward a more egalitarian position.

Lincoln’s balancing act was complex. Douglass and other advocates (including members of Congress) pressed for abolition while the border states clung to slavery, threatening secession. Lincoln initially prioritized holding onto the states that had not yet seceded.⁸⁷ He would ultimately move in Douglass’s direction even as Douglass himself moved toward a more fundamental and comprehensive linking of national military service with national citizenship and rights, but his path was cautious. Early in the war, Lincoln’s silence spoke louder than his words.

Lincoln’s military commanders initially got ahead of him regarding emancipation and enlistment. In October 1861, Secretary of War Simon Cameron authorized Brigadier General Thomas Sherman to hire Black laborers. When Cameron submitted his annual report in December, “he openly advocated employment of slaves as soldiers,” and distributed it without checking with Lincoln.⁸⁸ Lincoln removed him from the cabinet and reassigned him to serve as the minister to Russia.⁸⁹

Cameron’s example was not enough. In April 1862, Major General David Hunter declared Georgia, Florida, and South Carolina under martial

84. OAKES, *supra* note 18, at 121–22.

85. 2 MICHAEL BURLINGAME, *ABRAHAM LINCOLN: A LIFE* 465 (2008).

86. ERIC FONER, *THE FIERY TRIAL: ABRAHAM LINCOLN AND AMERICAN SLAVERY*, at xviii (2011).

87. BURLINGAME, *supra* note 85, at 465–67.

88. John T. Hubbell, *Abraham Lincoln and the Recruitment of Black Soldiers*, 2 *PAPERS OF THE ABRAHAM LINCOLN ASS’N* 6, 11 (1980).

89. *Id.*

law, and shortly thereafter, claiming that “[s]lavery and martial law in a free country are altogether incompatible,” declared all slaves in these states to be free.⁹⁰ Lincoln immediately countermanded the order, stating that he was the only one with the authority to free any slaves.⁹¹ He pitched again the compromise that the United States would “cooperate with any State which may adopt a gradual abolishment of slavery,” by compensating white slaveholders.⁹²

Undaunted, Hunter pursued Black enlistment, organizing a regiment by conscripting, sometimes forcibly, Black men in South Carolina. Reports from the hastily organized camps drew massive media attention throughout May and June.⁹³ Congress called on the Secretary of War to investigate and report. Stanton tasked Hunter with replying, and Hunter boasted of his successes and asked for more resources and authority to extend his experiment in a statement read before the House on July 2, 1862.⁹⁴ Lincoln maintained his silence until August, when he stated “that he was not prepared to go to the length of enlisting negroes as soldiers. He would employ all colored men as laborers but would not promise to make soldiers of them.”⁹⁵ He clarified his logic: Citing Kentucky particularly, he warned that “to arm the negroes would turn 50,000 bayonets from the loyal Border States against that were now for us.”⁹⁶ He recognized that permitting Black enlistment would send a different and much stronger signal to the border states about the impossibility of maintaining slavery or full Black subordination and feared a backlash. Nonetheless, he inched forward, asserting that all agreed about the legitimacy of hiring Black laborers and “the confiscation of rebel property.”⁹⁷ Hunter, dismayed, disbanded his troops.

Horace Greeley, the *New York Tribune*’s editor, publicly pressured Lincoln in August 1862 to reorient the war toward the destruction of slavery. This time, Lincoln had to respond publicly. He reiterated his commitment to

90. DUDLEY TAYLOR CORNISH, *THE SABLE ARM: BLACK TROOPS IN THE UNION ARMY, 1861-1865*, at 35 (Univ. Press of Kan. 1987) (1956). Hunter, commanding recaptured territory in Georgia that included an area around Port Royal largely under Black control after whites had fled, was a staunch abolitionist, but also saw the opportunity to secure loyalty and service from a sympathetic body of men. Howard C. Westwood, *Generals David Hunter and Rufus Saxton and Black Soldiers*, 86 S.C. HIST. MAG. 165, 166–67 (1985).

91. CORNISH, *supra* note 90, at 35–36.

92. Abraham Lincoln, *Proclamation 90—Revoking Major General David Hunter’s Order of Military Emancipation*, AM. PRESIDENCY PROJECT (May 19, 1862), <https://www.presidency.ucsb.edu/node/202386>.

93. CORNISH, *supra* note 90, at 36–43.

94. *Id.* at 42–45.

95. *The Employment of Negroes as Soldiers*, N.Y. TIMES, Aug. 8, 1862, at 4, <https://timesmachine.nytimes.com/timesmachine/1862/08/06/78694894.html> (emphasis omitted).

96. *Id.*

97. *Id.*; see CORNISH, *supra* note 90, at 50–51.

save the Union, and to do so “the shortest way under the Constitution.”⁹⁸ He declared himself an agnostic: “If I could save the Union without freeing *any* slave I would do it, and if I could save it by freeing *all* the slaves I would do it; and if I could save it by freeing some and leaving others alone, I would also do that.”⁹⁹ His policy toward slaves and slavery simply reflected his efforts to “save thise [sic] Union.”¹⁰⁰ He saw his “*official* duty” as securing the Union’s salvation, but noted that “I intend no modification of my oft-expressed *personal* wish that all men every where could be free.”¹⁰¹

Lincoln’s public disavowal of any intent to destroy slavery or advance Black enlistment was incomplete. Even as Hunter retreated, Secretary of War Stanton authorized Saxton in South Carolina to enlist and train up to 5,000 men.¹⁰² While Stanton warned Kansas General James Lane in August that the President had not authorized the creation of Black units, he allowed Lane to proceed.¹⁰³ Benjamin Butler also formed three Black regiments in Louisiana without presidential rebuff.¹⁰⁴ Lincoln was now discussing emancipation with his cabinet, but the preliminary proclamation of September 1862 did not address Black service. Nevertheless, in October, when Colonel Daniel Ullman pressed him to enlist Black troops, Lincoln asked whether he would be willing to command a unit, and Ullman was ultimately appointed brigadier general in charge of volunteers.¹⁰⁵

The final proclamation of January 1, 1863, advanced the issue. Lincoln declared that all slaves held in areas of rebellion were freed, stating that “the Executive Government of the United States, including the military and naval authority thereof, will recognize and maintain the freedom of such persons.”¹⁰⁶ The Proclamation also acknowledged the desperate need for more capacity, advising that “such persons of suitable condition, will be received into the armed service of the United States to garrison forts, positions, stations, and other places, and to man vessels of all sorts.”¹⁰⁷ While this statement did not endorse Black combat enlistment, the Department of War took it as full authorization, understanding it as, in Lincoln’s words in

98. Abraham Lincoln, *A Letter from the President*, DAILY NAT’L INTELLIGENCER (Aug. 23, 1862), <https://www.loc.gov/resource/mal.4233400/?st=text>.

99. *Id.*

100. *Id.*

101. *Id.*

102. Hubbell, *supra* note 88, at 12.

103. *Id.* at 14.

104. *Id.*

105. *Id.* at 14–15.

106. Abraham Lincoln, *Emancipation Proclamation*, NAT’L ARCHIVES (Jan. 1, 1863), <https://www.archives.gov/exhibits/featured-documents/emancipation-proclamation/transcript.html>.

107. *Id.*

the Proclamation itself, “an act of justice, warranted by the Constitution, upon military necessity.”¹⁰⁸ Plans advanced for full-scale recruitment and incorporation of Black enlistees.

Lincoln let military officials recruit Black troops and white officers willing to serve in Black regiments. Black Northerners were divided about the prospect of volunteering, with some expressing less enthusiasm in 1863 than they had earlier, so concerted efforts were organized to persuade them on the basis that deep racial reform was on the horizon.¹⁰⁹ Recruiters used Lincoln’s name and the Emancipation Proclamation.¹¹⁰ As the enlistment efforts flourished, Lincoln began communicating his approval directly, recognizing both the value of and need for this vital additional capacity. In early August, while congratulating Grant on his Vicksburg victory, he encouraged Grant to pursue Black enlistment: “[I]t is a resource which, if vigorously applied now, will soon close this contest. It works doubly, weakening the enemy and strengthening us.”¹¹¹ Over the last half of 1863, Lincoln spoke of necessity, linking Black emancipation, Black military service, and the preservation of the Union. For example, in a draft campaign document, he asserted, “Negroes, like other people, act upon motives. Why should they do any thing for us, if we will do nothing for them? If they stake their lives for us, they must be prompted by the strongest motive—even the promise of freedom.”¹¹²

Yet Black service, not just as military necessity, but as a crucial, voluntary contribution to national survival, may have moved him to link not just freedom and service, but to consider equality. Southern treatment of Black troops contributed to this shift after Lincoln got word that prisoners of war were being re-enslaved. On July 30, 1863, he promised retaliation for mistreatment of Black prisoners of war. He warned that if Southerners sold or enslaved “anyone because of his color,” the Union would place a rebel prison of war “at hard labor on the public works.”¹¹³ Additionally, for any U.S. soldiers killed in violation of the laws of war, the Union would retaliate by executing prisoners.

Lincoln’s framing of retaliation was notable. He declared, “[i]t is the duty of every government to give protection to its citizens, of whatever class,

108. *Id.*

109. Brian Taylor, *A Politics of Service: Black Northerners’ Debates over Enlistment in the American Civil War*, 58 CIV. WAR HIST. 451, 464–65 (2012).

110. Hubbell, *supra* note 88, at 16–17.

111. *Id.* at 18 (quoting Lincoln to Grant (Aug. 9, 1863), in 6 THE COLLECTED WORKS OF ABRAHAM LINCOLN 374 (Roy Basler ed., 1953)).

112. *Id.* at 19 (quoting Lincoln to James C. Conkling (Aug. 26, 1863), in 6 THE COLLECTED WORKS OF ABRAHAM LINCOLN, *supra* note 111, at 408–10).

113. Abraham Lincoln, *Executive Order—Retaliation*, AM. PRESIDENCY PROJECT (July 30, 1863), <https://www.presidency.ucsb.edu/documents/executive-order-retaliation>.

color, or condition, and especially to those who are duly organized as soldiers in the public service.”¹¹⁴ The Southern practice of re-enslavement was “a relapse into barbarism and a crime against the civilization of the age.”¹¹⁵ For Lincoln, freed persons were citizens, and Black servicemembers were entitled to equality. His retaliatory threats reinforced both Black citizenship and manhood as something earned through service and the dependence of status on civic recognition of full humanity—a recognition that he was prepared to withdraw from Southern prisoners of war.

As 1863 waned, however, tension remained in Lincoln’s stance concerning the scope of Black freedom. In a public address in December, he promised pardons and amnesty to loyalists seeking reintegration with the Union, underlining his support for the moderate plan advocated by General Nathaniel Banks, who was managing the transition to postwar politics in Louisiana. While one faction wanted to abolish slavery completely, move toward Black suffrage, and limit political participation by former Confederates, Lincoln had placed Banks in charge in November, and Banks proceeded to run an election prior to transforming Louisiana’s state constitution.¹¹⁶ Lincoln remarked that Southerners who wished to resume their allegiance could regain their rights and property exclusive of slaves if they swore an oath of fealty and agreed to “faithfully support all proclamations of the President made during the existing rebellion having reference to slaves, so long and so far as not modified or declared void by . . . the Supreme Court.”¹¹⁷ He did not extend this promise, however, to “all who have engaged in any way in treating colored persons, or white persons in charge of such, otherwise than lawfully as prisoners of war.”¹¹⁸ Despite acknowledging Black troops as soldiers and citizens, he remained cautious about the broader group of newly freed slaves, empowering the newly reconstituted state governments to adopt measures “consistent as a temporary arrangement with their present condition as a laboring, landless, and homeless class.”¹¹⁹

Lincoln admitted that his beliefs about slavery, liberty, and Black military service changed over time. In April 1864, he spoke in Baltimore after receiving word that Confederate troops had massacred Black prisoners of war

114. *Id.*

115. *Id.*

116. JOHN C. RODRIGUE, *LINCOLN AND RECONSTRUCTION* 79–80 (2013).

117. Abraham Lincoln, *Proclamation 108—Amnesty and Reconstruction*, AM. PRESIDENCY PROJECT (Dec. 8, 1863), <https://www.presidency.ucsb.edu/node/202362>.

118. *Id.*

119. *Id.*

and their white officers at Fort Pillow in Tennessee.¹²⁰ He noted that at the war's inception, no one had expected a long war, nor, he claimed, had anyone realized that slavery "would be much affected by the war."¹²¹ Liberty had held different meanings for Americans, with some seeing it as allowing "each man to do as he pleases with himself" and for others, allowing "some men to do as they please with other men, and the product of other men's labor."¹²² Now, despite slaveholders' complaints that losing slaves and slavery destroyed their liberty, Lincoln asserted that the war had aligned with emancipation, declaring the slaveholders' liberty to be tyranny.¹²³ Lincoln underlined that while he originally did not contemplate using Black troops, he "resolved to turn that element of strength to account," and held himself accountable for that decision "to the American people, to the Christian world, to history, and in my final account to God."¹²⁴ The soldier's status trumped racial considerations: "Having determined to use the negro as a soldier, there is no way but to give him all the protections given to any other soldier"¹²⁵

In August 1864, Lincoln invited Douglass to the White House for consultation. The men met for more than an hour (with Lincoln delaying a meeting with the governor of Connecticut to continue his conversation with "my friend Douglass").¹²⁶ Lincoln was concerned that the Emancipation Proclamation had not provoked enough of a mass exodus from slavery as he had anticipated, and that a Democratic win in the election of 1864 could result in the settlement of the great conflict with the preservation of slavery. Douglass agreed to develop a network to spread the news more widely throughout the South in addition to the work he was already doing as a military recruiter, and his encounter with Lincoln left him finally persuaded that Lincoln was truly and irrevocably in favor of destroying slavery.¹²⁷

We cannot know where Lincoln would have ended up had he witnessed Southern resistance to Black civic incorporation and congressional Reconstruction. But his last public address, delivered on April 11, 1865, indicated how far he had come and how Black military service had moved

120. Abraham Lincoln, *Address at Sanitary Fair in Baltimore: A Lecture on Liberty*, AM. PRESIDENCY PROJECT (Apr. 18, 1864), <https://www.presidency.ucsb.edu/node/289396>.

121. *Id.*

122. *Id.*

123. *Id.*

124. *Id.*

125. *Id.* By the end of the war, even the Confederacy's military leaders encouraged the enlistment and coupled emancipation of slaves to bolster their military forces. See generally BRUCE LEVINE, CONFEDERATE EMANCIPATION: SOUTHERN PLANS TO FREE AND ARM SLAVES DURING THE CIVIL WAR (2006).

126. OAKES, *supra* note 18, at 232.

127. *Id.* at 230–32.

him.¹²⁸ Speaking four days before his assassination, he addressed Louisiana's efforts to re-establish a loyal government, recalling his late 1863 reconstruction framework.¹²⁹ He acknowledged that he had encountered pressure to go further, declaring broader emancipation, omitting any suggestion of apprenticeship for freed persons, and not ceding ground to the courts.¹³⁰ He commented on Louisiana's limited incorporation of only 12,000 loyal citizens, noting that some had objected to the failure to extend the franchise to Black men. For his part, Lincoln asserted that "I would . . . prefer that it were now conferred on the very intelligent, and on those who serve our cause as soldiers."¹³¹ He counseled patience for Black men who were not yet enfranchised and encouraged all to accept the modest advances proposed.

Lincoln's final encounter with Douglass took place at the inaugural reception held at the White House after he delivered his inaugural address. While the doormen attempted to prevent his entry on racial grounds, Douglass refused to be rebuffed, asking a friend to intercede for him with Lincoln himself.¹³² When Douglass entered the East Room, Lincoln approached him, declaring, "Here comes my friend Douglass," and asked for Douglass's opinion about his address.¹³³ Douglass demurred, but Lincoln insisted: "[T]here is no man in the country whose opinion I value more than yours."¹³⁴ When Douglass praised the address, Lincoln told him he was glad that he had liked it. Douglass returned to Rochester, where six weeks later, a throng of residents would gather to listen to him address an impromptu memorial service at City Hall immediately after receiving the news of Lincoln's death.¹³⁵

In sum, Lincoln never completely endorsed Black civic incorporation, but he ultimately supported Black citizenship. He advanced pragmatically, first prioritizing the Union's preservation at any cost, including allowing slavery to continue. As the need for labor and troops increased, Lincoln initially resisted Black incorporation into the military even when Congress, the War Department, and some members of his cabinet were pressing forward. But the final Emancipation Proclamation endorsed not just allowing Black labor to support the war effort, but also enlisting Black troops. After the final Proclamation, he framed military service as an equalizer, entitling

128. Abraham Lincoln, *The President's Last Public Address*, AM. PRESIDENCY PROJECT (Apr. 11, 1865), <https://www.presidency.ucsb.edu/documents/the-presidents-last-public-address>.

129. *Id.*

130. *Id.*

131. *Id.*

132. OAKES, *supra* note 18, at 241–42.

133. *Id.* at 242.

134. *Id.*

135. *Id.* at 243.

Black troops to the same respect, protections, and rights as their white counterparts.

CONCLUSION

With Lincoln silenced in 1865, Douglass had the last word. The great orator addressed Lincoln's legacy in 1876 at the dedication of the Freedmen's Monument in Washington, D.C. The monument, funded almost entirely by formerly enslaved people, depicted Lincoln with the Proclamation in one hand and the other outstretched over a kneeling, unclothed ex-slave with broken chains.¹³⁶ Speaking before an audience including members of the House, Senate, Supreme Court, and President Grant, Douglass celebrated "we, the colored people, newly emancipated and rejoicing in our blood-bought freedom," underlining the incorporation of Black citizens into the constitutional pact and reminding the audience of Black contributions in the war to destroy slavery.¹³⁷ Yet he described Lincoln as "preeminently the white man's President, entirely devoted to the welfare of white men."¹³⁸ White citizens were Lincoln's true children, with Black citizens "at best only his stepchildren . . . children by forces of circumstances and necessity."¹³⁹ Yet while white Americans owed Lincoln devotion for saving the nation, Lincoln's legacy of "deliver[ing] us from . . . bondage" was superior.¹⁴⁰

Douglass detailed Lincoln's tortured path toward supporting abolition and the disappointments African Americans endured until he endorsed abolishing slavery forever. Douglass praised his navigation of irreconcilable political tensions and his ultimate alignment of political imperatives with his own personal hatred of slavery. Lincoln's assassination was the "crowning crime of slavery," a rhetorical twist placing Lincoln with the slaves he had freed and emphasizing their shared battle to end the evil institution.¹⁴¹ Douglass closed by commending his Black fellow citizens for honoring "the memory of our friend and liberator,"¹⁴² an image of Lincoln that would

136. *Emancipation Memorial*, NAT'L PARK SERV., <https://www.nps.gov/places/000/emancipation-memorial.htm> (last visited July 2, 2023).

137. Frederick Douglass, *Oration in Memory of Abraham Lincoln*, UNIV. OF ROCHESTER FREDERICK DOUGLASS PROJECT (Apr. 14, 1876), <https://rbscp.lib.rochester.edu/4402> [hereinafter Douglass, *Oration in Memory of Lincoln*].

138. *Id.*

139. *Id.*

140. *Id.*

141. *Id.*

142. *Id.*

prevail for generations and would be used as a recruiting device for future generations of Black soldiers.¹⁴³

Despite Douglass's talents, he could not secure his vision of Black rights and incorporation. While he celebrated the "two hundred thousand of our . . . people responding to the call,"¹⁴⁴ and demanded full value for the contract for civic membership written in their blood, retrenchment ultimately won the day. Douglass's hope that Black military service would secure full equality prevailed only briefly. For decades, the nation accepted Lincoln's model of encouraging Black military service in times of need but not allowing this service to establish civic rights or equality for Black citizens. Black veterans nevertheless honored Douglass's dream through successive military engagements. The national civil rights movement dawned at the end of World War II and the first comprehensive national blow against segregation in the U.S. armed services.¹⁴⁵ Black involvement in war could not drive transformative change alone. Nevertheless, as Douglass understood, war-making can raise questions of incorporation for marginalized groups that may have broader implications for the meanings and rewards attached to military service.

143. See, e.g., E.G. Renesch, *True Blue*, HARRY S. TRUMAN LIBR. & MUSEUM (1919), <https://www.trumanlibrary.gov/sites/default/files/TrueBlueposter.pdf>; Charles Gustrine, *True Sons of Freedom*, THE LIBR. OF CONG. (1918), <https://www.loc.gov/item/93503146/>.

144. Douglass, *Oration in Memory of Lincoln*, *supra* note 137.

145. See generally STEVEN WHITE, *WORLD WAR II AND AMERICAN RACIAL POLITICS: PUBLIC OPINION, THE PRESIDENCY, AND CIVIL RIGHTS ADVOCACY* (2019); PHILIP KLINKNER & ROGERS M. SMITH, *THE UNSTEADY MARCH: THE RISE AND DECLINE OF RACIAL EQUALITY IN AMERICA* (1999).