

# THE WORK IS NOT DONE: FREDERICK DOUGLASS AND BLACK SUFFRAGE

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*Since antiquity, political theorists have tried to identify the proper balance between ideals and pragmatism in political and public life. Machiavelli and Aristotle both offered prudence as an approach, but with different ends in mind: stability and the good, respectively. Among the many contributions Kurt Lash's two-volume set on the Reconstruction Amendments provides to present-day discourse, it supplies the careful reader an answer to this timeless question by highlighting the role of Frederick Douglass in public deliberation over the Fifteenth Amendment. In this Essay I argue that American abolitionist, social reformer, and statesman Frederick Douglass illustrates and enacts the Aristotelian approach. During the Reconstruction period, there was a tension between the ideal (civil rights) and practical reality (opposition to black suffrage). The general public's lackluster desire for equal political rights, even at a time when there was a strong desire to secure natural and civil rights through constitutional amendment, presented little hope for black—let alone universal—suffrage. Further, blacks' closest allies were not in lockstep in their political efforts during this critical period. Whether it was William Lloyd Garrison and the American Anti-Slavery Society seeking to declare anti-slavery work in the U.S. "complete," or women leaders partnering with northern Democrats and championing the slogan "educated suffrage," black suffrage efforts faced significant obstacles on every side. But Douglass remained undaunted. He realized that the abstract principles of natural right and justice would be insufficient in the face of such opposition. In its place, Douglass, with great success, appealed to political expediency and the self-interest of Republicans. Douglass navigated this tension by abandoning, temporarily, his high ideal of universal suffrage and instead advocating for black suffrage at the expense of women's suffrage. This decision was not a repudiation of principle. Rather, it was a deliberate, prudential choice to pursue, as Aristotle advised, the highest good—universal suffrage. Indeed, Douglass's efforts to secure black suffrage during Reconstruction demonstrate both the precarious*

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*nature of public support for black suffrage and the need for political actors to sacrifice, at times, the theoretically pure for the politically necessary.*

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## INTRODUCTION

Political theorists have long struggled to resolve the tension between theory and practice in politics. Though political actors may yearn to enact their values, political exigencies often require less-than-ideal behaviors. Two well-known political thinkers offer different solutions to this dilemma. Aristotle suggested that individuals balance the demands of ideals and practical reality by developing prudence in the form of practical wisdom. When exercised appropriately, he argued, prudence would allow actors to consider what justice requires while also responding to what is politically possible.<sup>1</sup> Put differently, a prudent political actor could guide the regime toward “the good,” even if full realization of that good is never practically possible.<sup>2</sup> Machiavelli offered a different solution. Rather than encourage political actors to prioritize some conception of the good, Machiavelli emphasized the

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1 See ARISTOTLE, *Nicomachean Ethics*, in THE BASIC WORKS OF ARISTOTLE 927, 1030 (1142a13–14) (Richard McKeon ed., 1941) (“The cause is that such wisdom [practical wisdom] is concerned not only with universals but with particulars, which become familiar from experience . . . .”); Richard S. Ruderman, *Aristotle and the Recovery of Political Judgment*, 91 AM. POL. SCI. REV. 409, 413 (1997) (“Thus, political prudence needs philosophy at least to this extent: Only those who comprehend human nature can judge how to arrange and satisfy our ends . . . . While Aristotelian prudence need not entail political participation, it cannot for that reason become . . . a strictly apolitical or private affair. It must still consider political questions but from a broader perspective.”).

2 See ARISTOTLE, *supra* note 1, at 1034 (1144a7–9) (“Again, the work of man is achieved only in accordance with practical wisdom as well as with moral virtue; for virtue makes us aim at the right mark, and practical wisdom makes us take the right means.”).

importance of regime stability. When faced with a dilemma between theory and practice, then, he admonished individuals to pursue whatever course of action would best ensure the stability of the state. At times, this might require the political actor to sacrifice or even abandon private virtues. For Machiavelli, though, this was a worthwhile price: to do otherwise would lead to ruin for the regime and, by extension, the individual.<sup>3</sup>

Prudence as an art presents several complexities. When and how to sacrifice one's ideal—how much to concede, and for how long—is a difficult balance to strike. We might liken the dilemma to a captain steering her ship with the North Star as her guide.<sup>4</sup> While the North Star might lead her to the Promised Land, it does not bode well to keep her gaze upward at the expense of running the ship aground or needlessly imperiling the ship among rocks, glaciers, or treacherous waters. At times the skilled captain must heed her surroundings and veer off course for the sake of the ship. But the captain does so only as necessary to keep the final destination within her sights.

In this Essay, I consider what Frederick Douglass's approach to black suffrage in Reconstruction contributes to this age-old dilemma. Though Reconstruction opened the door to an unprecedented expansion of civil rights, there was less political or public motivation to secure political rights for freedmen. This was particularly true with black suffrage. Despite the generally accepted sentiment that freedom and certain civil rights rightfully belonged to all persons, many felt that suffrage was fundamentally a political question. And extending suffrage to blacks was a possibility that a large portion of the populace was not willing to entertain.<sup>5</sup>

Acting in this context, Douglass provided a compelling example of how to balance ideals and pragmatism. Though he remained committed to universal suffrage, for a period during Reconstruction he made the critical switch from advocating for universal suffrage to pushing black suffrage at the expense of women's suffrage. I argue that this move exemplifies the Aristotelian approach to the dilemma of theory

3 See NICCOLÒ MACHIAVELLI, *THE PRINCE* 61 (Harvey C. Mansfield, Jr. trans., 1985) ("But since my intent is to write something useful to whoever understands it, it has appeared to me more fitting to go directly to the effectual truth of the thing than to the imagination of it. . . . [F]or it is so far from how one lives to how one should live that he who lets go of what is done for what should be done learns his ruin rather than his preservation.")

4 Cf. Frederick Douglass, *The Constitution of the United States: Is It Pro-Slavery or Anti-Slavery?* (Mar. 26, 1860), in 2 *THE LIFE AND WRITINGS OF FREDERICK DOUGLASS: PRE-CIVIL WAR DECADE 1850–1860*, at 467, 467 (Philip S. Foner ed., 1950).

5 From 1865 to early 1866, five major referenda to institute black suffrage in states or territories failed. These jurisdictions included Colorado, Connecticut, Wisconsin, Minnesota, and DC. See WILLIAM GILLETTE, *THE RIGHT TO VOTE: POLITICS AND THE PASSAGE OF THE FIFTEENTH AMENDMENT* 25–26 (2019).

and practice. Yes, Douglass sacrificed his theory of justice to realize black suffrage, but he did so with an eye to the *ultimate* good—universal suffrage. Had he been more Machiavellian, Douglass might have pursued the course that he thought would best promote stability. For example, many argued that the question of blacks voting did not rest on whether blacks were equal to whites, but whether whites were confident enough in their manhood to allow blacks to vote. Voting, they insisted, was a manly endeavor, and opening the door to black males was a proper test of men’s confidence in their superior status as white males.<sup>6</sup> But, foregoing arguments that appealed to base prejudices, Douglass opted for the more refined strategy of *separating* the question of black suffrage from women’s suffrage because he knew that justice required that women eventually have the right to vote as well, and because he feared that certain arguments, though presently useful, might unnecessarily dampen future prospects for universal suffrage. Indeed, immediately after black male suffrage was secured, Douglass turned his sights to the claims of justice again, advocating for women’s suffrage. This quick turn suggests that all along, Douglass was guided by Aristotelian prudence—prioritizing present action for the aim of the highest, ultimate good. He prudently chose the path least compromising of just principles and stuck to it only so long as was necessary to ensure that the regime *bent* toward justice.

Douglass’s example is one that political and constitutional actors might heed when navigating the complexities of pursuing just ends while constrained by a political-constitutional framework. Douglass had the wisdom to forsake the theoretically pure for the politically necessary.

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6 Evidence of this can be seen, for example, in the debates surrounding black suffrage in Missouri. See Martha Kohl, *From Freedom to Franchise: The Debate over African American Enfranchisement, 1865–1870*, 16 GATEWAY HERITAGE 22, 31 (1996) (“Radicals responded to this campaign by challenging their opponents’ manhood. Because the right to vote was so intimately connected with concepts of masculinity in the nineteenth century, to suggest that only effeminate need fear Negro suffrage was a neat rhetorical trick, one employed by the *Missouri Democrat* this way: ‘Those who vaguely fear that the white race “will be dragged down to the level of the negro” have strangely little confidence in their own worth and manhood . . . Tell us, men of Missouri, if you fear “negro equality,” are you afraid of yourselves, or are you afraid of the negroes?’”).

## I. THE WORK IS NOT DONE

In May 1865, in the wake of the Civil War, William Lloyd Garrison declared that the anti-slavery work was complete.<sup>7</sup> With the permanent abolition of slavery, the anti-slavery movement was devoid of purpose. Garrison, relishing the victory over slavery and oppression, recommended that the Anti-Slavery Society immediately disband.

Douglass thought otherwise. The anti-slavery movement, Douglass argued, was based on two principles: “first, the freedom of the blacks of this country; and, second, the elevation of them.”<sup>8</sup> The first goal had been substantially achieved, but it was not enough to merely emancipate slaves. Without a firm basis upon which to protect their rights, former slaves risked escaping odious chattel slavery only to fall prey to the more pernicious form of servitude—*civil* slavery. Abolitionists could not fulfill their duty if freedmen were left in such a precarious state.

Douglass proclaimed that the *only* thing that would make blacks truly free was the right to vote. He called for “‘the immediate, unconditional, and universal’ enfranchisement of the black man, in every State in the Union.”<sup>9</sup> Without political rights, their liberty was a “mockery.”<sup>10</sup> Until blacks secured the right to vote, their freedom would not be a right but something more of a privilege, to be granted or withdrawn by capricious rulers.

Though Douglass believed the struggle for black suffrage was nothing more than an extension of antebellum anti-slavery efforts, his methods for fighting that battle changed. Using natural rights theory as a foundation, in the antebellum period, Douglass argued that blacks already had the right to vote based on the natural equality of human beings, coupled with allegiance to the political community.<sup>11</sup> During the Reconstruction era, however, Douglass drastically shifted his line

7 See Phillip S. Foner, *Frederick Douglass: Reconstruction, 1865–1868*, in 4 *THE LIFE AND WRITINGS OF FREDERICK DOUGLASS: RECONSTRUCTION AND AFTER* 13, 15 (Philip S. Foner ed., 1955).

8 Frederick Douglass, *What the Black Man Wants* (April 1865), in 4 *THE LIFE AND WRITINGS OF FREDERICK DOUGLASS: RECONSTRUCTION AND AFTER*, *supra* note 7, at 157, 163; see also Frederick Douglass, *Speech of Frederick Douglass*, *LIBERATOR*, Feb. 10, 1865, at 22, as reprinted in 1 *THE RECONSTRUCTION AMENDMENTS: THE ESSENTIAL DOCUMENTS* 522, 522 (Kurt T. Lash ed., 2021) [hereinafter LASH, Vol. 1].

9 Douglass, *What the Black Man Wants*, *supra* note 8, at 158.

10 *Id.*

11 For an exposition of Douglass’s constitutional theory during the antebellum period, see Bradley Rebeiro, *Natural Rights (Re)Construction: Frederick Douglass and Constitutional Abolitionism*, (2021) (Ph.D. dissertation, University of Notre Dame) (available upon request from author).

of argument in advocating for political rights. He emphasized two major premises during Reconstruction that stressed the conventional nature of political rights, arguments which were only appendages to his natural rights argumentation in the antebellum period. First, he argued that the right to vote was not only a matter of natural equality, but also contingent on the form of regime the political community assumed. Second, he argued that the right to vote for blacks principally was a matter of expediency. The first major premise remained closely connected to, even if not solely reliant upon, natural rights principles, but the second line of argument was most puzzling because it in some ways *subordinated* natural rights claims. Though he never repudiated his natural rights argumentation from the antebellum period, Douglass minimized such claims when it mattered most during Reconstruction.

The reasons for Douglass's shift become clearer in the context of the political realities he faced in the quest for black suffrage. Douglass faced two principal challenges: First, post-Civil War efforts to achieve black suffrage failed early and often. Second, women at this time, led by Elizabeth Stanton and Susan B. Anthony, were also pushing for equal voting rights. Douglass strongly supported women's suffrage in the antebellum period.<sup>12</sup> And while he likely would have preferred that *all* received equal voting rights at once, Douglass realized that the question of black suffrage had to be separated from women's suffrage if his efforts were to succeed. It is here that we find that Douglass's actions could only be explained by prudence—it was enough that the constitutional arc of justice bent toward freedom, even if freedom was not to be fully realized. Douglass's changed argument was not a matter of changed political theory. Rather, he made a prudential calculation that black suffrage needed to take pride of place at this critical constitutional moment. That Douglass's natural-rights-based thinking did not change is evinced by his immediate return to advocating for women's suffrage *after* the Fifteenth Amendment was ratified.

## II. DOUGLASS'S POLITICAL RIGHTS THEORY

Douglass argued that the black claim to suffrage relied on two lines of argument. First, the right to vote was theirs because of natural rights and the nature of the regime. Douglass curtly stated: "We want it because it is our *right*, first of all."<sup>13</sup> Logically, the primary claim blacks had to voting was based on natural rights. Douglass's state-of-nature theory not only envisioned human beings in a perfect state of

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12 See, e.g., Frederick Douglass, Equal Suffrage (Nov. 1860), in 2 THE LIFE AND WRITINGS OF FREDERICK DOUGLASS: PRE-CIVIL WAR DECADE 1850–1860, *supra* note 4, at 525, 525.

13 Douglass, What the Black Man Wants, *supra* note 8, at 159.

freedom according to the natural law, but also saw human beings as fundamentally social.<sup>14</sup> In this state of nature, all human beings had equal natural powers that were the source of their natural rights and, importantly, lived in communities. Individuals were naturally drawn to each other; as Douglass remarked, “individual isolation is unnatural, unprogressive and against the highest interests of man.”<sup>15</sup> When entering political society, human beings’ natural equality informed government’s most basic principles, including representation. Being what they were, human beings inexorably existed in communities and yet, each enjoying self-ownership, could live properly by no other principle than self-government. It was therefore essential for human beings to have the equal opportunity to vote as an outward manifestation of their natural powers. Moreover, exercising the right to vote became something of a duty, as human beings not only had the power to govern themselves, but their relational character imputed mutual obligations upon all to share in governance. Self-ownership, the natural pull to political society, and human beings’ social nature all mutually reinforced Douglass’s theory of the need for universal suffrage. Voting tied individuals to the political community and served as a conduit to a greater cognizance of one’s sense of self within a community—as an individual bearer of natural rights with political obligations to the community that one has given allegiance to. Voting in this respect was an educative endeavor as much as a fulfilling of one’s purpose—human beings gained a sense of their capacities and responsibilities as they realized them within the social context.<sup>16</sup> If persons did not vote, they were deprived not only of their natural rights, but also of a greater sense of their natural powers and their worth within the political community. Voting, therefore, was critical to the development of both the individual and the commonwealth.

Beyond the natural rights element, America’s particular regime warranted universal suffrage. In social contract theory, political societies are established on the basis of consent. All members of the commonwealth exercise their ability to self-govern by consenting to the laws of the commonwealth. Douglass believed this was necessary because the natural law, though the source of natural rights, had no effect except through positive law enactments. In the case of the U.S., a

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14 This might be seen as a slight revision on Locke’s state-of-nature theory, which described man as in a perfect state of freedom, but individual and isolated. See JOHN LOCKE, TWO TREATISES OF GOVERNMENT 128 (Lee Ward ed., 2016).

15 Frederick Douglass, *Is Civil Government Right?* (Oct. 23, 1851), in 5 THE LIFE AND WRITINGS OF FREDERICK DOUGLASS: (SUPPLEMENTARY VOLUME) 1844–1860, at 208, 209 (Philip S. Foner ed., 1975).

16 See Douglass, *What the Black Man Wants*, *supra* note 8, at 159 (“No class of men can, without insulting their own nature, be content with any deprivation of their rights.”).

written Constitution established the mode of consent—through state conventions—and established what many referred to as the “organic” law of the land.<sup>17</sup> Douglass found it significant that the mode of governance the U.S. settled upon was a democratic republic. Douglass explained:

Again, I want the elective franchise, for one, as a colored man, because ours is a peculiar government, based upon a peculiar idea, and that idea is universal suffrage. If I were in a monarchical government, or an autocratic or aristocratic government, where the few bore rule and the many were subject, there would be no special stigma resting upon me, because I did not exercise the elective franchise. It would do me no great violence.<sup>18</sup>

For Douglass, a democracy best principle of consent permitted more than one legitimate form of government. Whether it was a monarchy, autocracy, or aristocracy, people could consent to be governed in various ways.<sup>19</sup> Presumably so long as the consent given was voluntary, individuals could acquiesce to a regime where there was not rule of the many, but rule based on the best, the brightest, the richest, the

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17 See, e.g., CONG. GLOBE, 39th Cong., 1st Sess., 351, 353–59 (Jan. 22, 1866) (statement of Rep. Rogers), as reprinted in 2 THE RECONSTRUCTION AMENDMENTS: THE ESSENTIAL DOCUMENTS 43, 44 (Kurt T. Lash, ed., 2021) [hereinafter LASH, Vol. 2]; CONG. GLOBE, 39th Cong., 1st Sess., 403–07 (Jan. 24, 1866) (statement of Rep. Eliot), as reprinted in LASH, Vol. 2, *supra*, at 53, 54; CONG. GLOBE, 39th Cong., 1st Sess., 2458–69 (May 8, 1866) (statement of Rep. Garfield), as reprinted in LASH, Vol. 2, *supra*, at 158, 162 (speaking of the nature of organic law when referencing the adoption of the first section of the Fourteenth Amendment: “It is precisely for that reason that we propose to lift that great and good law above the reach of political strife, beyond the reach of the plots and machinations of any party, and fix it in the serene sky, in the eternal firmament of the Constitution, where no storm of passion can shake it and no cloud can obscure it. For this reason, and not because I believe the civil rights bill unconstitutional, I am glad to see that first section here.”).

18 Douglass, What the Black Man Wants, *supra* note 8, at 159.

19 The important point here was that government’s origin had to be located in popular sovereignty. Zuckert helpfully clarifies that such accounts of government’s origins do not typically purport to give an *actual* historical account, but rather “it refers to a kind of moral account of the origin, or, perhaps better put, a rational reconstruction of the origin. . . . This is not so much a thesis about the past as a vision of the present and the future; it presents a way to reconceive the nature of politics and the relationship of citizens to it.” MICHAEL P. ZUCKERT, NATURAL RIGHTS AND THE NEW REPUBLICANISM 10 (1994). That said, while Douglass believed that popular sovereignty-based origins could legitimate various political regimes, there is some dispute as to whether nondemocratic natural rights-based regimes could be legitimate. See Douglass, What the Black Man Wants, *supra* note 8, at 159; ZUCKERT, *supra*, at 10, 165 (denoting the difference between theory and practice, which calls into question whether a nondemocratic regime could adequately account for a political philosophy based on natural rights). Cf. THOMAS G. WEST, THE POLITICAL THEORY OF THE AMERICAN FOUNDING: NATURAL RIGHTS, PUBLIC POLICY, AND THE MORAL CONDITIONS OF FREEDOM (2017) (arguing that a republic is the only legitimate form of government for a natural-rights-based regime).

most virtuous, or whatever other criterion.<sup>20</sup> But regardless of the regime type, the requirement of protecting natural rights would still remain—all governments were instituted for that sole purpose. Simply the *way* in which it was done would vastly differ. The natural rights and voting rights connection could, therefore, sever to some degree in non-democratic regimes. In an aristocracy, where the principle was rule by the few over the many, it would be no injustice to deny voting rights to the many given the nature of the regime. The aristocracy would remain legitimate so long as it ruled in a way that did not deprive others of their natural rights. In a regime where the rule was intentionally by the few and such rule was *consented* to, the equality principle would not extend to political rights. In a democracy, on the other hand, where the rule is by the many, the people consent to rule and to be ruled on an equal basis. Douglass argued that, in such regimes, universal suffrage was the rule. Anything otherwise would be an exception, and to single out blacks as the exception was to brand them “with the stigma of inferiority.”<sup>21</sup> In the U.S., blacks theoretically entered the social contract on an equal basis and consented to a regime founded on equal rule, but they were unjustly deprived of their equal status. Thus, equal voting rights for Douglass certainly were a consequence of natural human equality, but only in a regime premised on the principle of equal rule.

Douglass’s second line of argument, and what ultimately became his main contention, was that it was expedient that blacks have the right to vote. Though Douglass’s natural rights theory led to the conclusion that blacks and women should have a constitutional right to vote in the U.S., early on in the campaign for suffrage he began considering the prudence of advocating exclusively for black suffrage. Though Douglass’s rhetoric shifted to *black* suffrage instead of universal suffrage, the reality of his revised position was that he now advocated for black *male* suffrage. Here, Douglass not only set aside natural rights claims, but subordinated them in favor of expediency claims.<sup>22</sup> This turn can be seen in his debate with President Andrew Johnson

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20 That said, Douglass clearly believed that democratic republics constituted the best form of government. See Douglass, *What the Black Man Wants*, *supra* note 8, at 157–60; Frederick Douglass, *The Kansas-Nebraska Bill* (Nov. 1854), in 2 *THE LIFE AND WRITINGS OF FREDERICK DOUGLASS: PRE-CIVIL WAR DECADE 1850–1860*, *supra* note 4, at 316, 331–32.

21 Douglass, *What the Black Man Wants*, *supra* note 8, at 159.

22 This is not to say that he *completely* abandoned natural rights theory, but only that it often took a backseat to other argumentation. One exception to this trend was Douglass’s speech at the Southern Loyalists Convention in Philadelphia, where he admonished southern loyalists for adopting a platform of “equal rights and justice” but failing to advocate for black suffrage. See Frederick Douglass, *Speech at Southern Loyalist Convention*, Philadelphia, PA (*NAT’L ANTI-SLAVERY STANDARD*, Sept. 22, 1866, at 1), as reprinted in LASH, Vol. 2, *supra* note 17, at 269, 269–70.

and its aftermath, but it becomes most pronounced in his treatment of the women's suffrage question. Douglass put the problem simply when he stated, "I hold that women, as well as men, have the right to vote . . . and my heart and my voice go with the movement to extend suffrage to woman; *but that question rests upon another basis than that on which our right rests.*"<sup>23</sup> Natural rights required the regime to permit women to vote just as it did for blacks, but the right to vote for blacks, in Douglass's mind, had to rely on a separate basis if it were to become reality. Douglass believed that, unlike women, the matter of blacks voting was both a matter of life and death as well as a matter of political advantage for the North. And it was highlighting this aspect of the suffrage question that would lead to success for black suffrage. Driving home this point, Douglass noted that in the case of Americans "there is always more that is benevolent, I perceive, than just, manifested towards us [blacks]."<sup>24</sup> What seemed most effective was appealing to the political interests of Americans, and particularly Republicans, rather than justice. In the early stages of Reconstruction, Douglass certainly demanded justice, but he became increasingly persuaded that appealing to political expediency and Republican interests presented the best chance of success.<sup>25</sup>

Aside from believing that Americans might respond better to arguments based on expediency, Douglass found the problem of political rights to be truly unique in the case of blacks. To Douglass, unlike women's predicament, the situation for blacks and their right to vote was a matter of life and death—a reality that caused Douglass to marshal forth arguments that were inconsistent with his own theory. Not even natural rights constitutionalism could answer the needs of blacks then. At a time when the public fretted over the constitutionality of the Thirteenth Amendment, let alone its meaning, Douglass was largely dismissive of the whole debate. Regardless of its constitutionality or meaning, he believed that the Thirteenth Amendment alone

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23 Douglass, *What the Black Man Wants*, *supra* note 8, at 159 (emphasis added).

24 *Id.* at 164.

25 Douglass's comments here curiously reflect observations made by Alexis de Tocqueville, who observed that Americans were more apt to do what might be considered just or good if they believed it to be in their self-interest (even when it was not) than do something simply for the sake of justice or the good. Tocqueville captured this idea with the term "self-interest well understood." ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 500–03 (Harvey C. Mansfield & Delba Winthrop eds. & trans., 2000). Douglass may have been influenced by Tocqueville's thinking on this point, as he certainly studied his work and was a fan. See Frederick Douglass, *The Case of Rev. Dr. Pennington* (June 1855), in 5 *THE LIFE AND WRITINGS OF FREDERICK DOUGLASS: (SUPPLEMENTARY VOLUME) 1844–1860*, *supra* note 15, at 351, 354.

could not meet the needs of blacks in the Union.<sup>26</sup> And this was not just a “southern” problem. Both in the North and in the South, for example, blacks were denied the right to testify in courts, a right even the Thirty-Ninth Congress thought was essential to the protection of natural rights.<sup>27</sup> A broad natural rights construction of the Thirteenth Amendment might implicate such a right, but Douglass was not convinced that it mattered. In perhaps his first expression of doubt concerning natural rights constitutionalism, Douglass stated, “I have thought, for the last fifteen years, that we had an anti-slavery Constitution . . . . But we have had slavery all along.”<sup>28</sup> What good was it, Douglass wondered, to have provisions such as the Privileges and Immunities Clause, if southern states were going to simply ignore them?<sup>29</sup> Though the provisions could be constructed to protect natural rights, such constructions were never adopted in actual governance. The only thing that could resolve blacks’ predicament was express laws that unassailably granted blacks political rights. Anything short of that, though theoretically sufficient, was practically insufficient in the cause of emancipation.<sup>30</sup>

That said, Douglass ultimately did not experience the sort of change of opinion that he experienced in his conversion from Garrisonian pro-slavery constitutionalism to anti-slavery constitutionalism.<sup>31</sup> Douglass returned to natural rights constitutionalism after the ratification of the Fifteenth Amendment. He returned to the cause of women’s political rights, employing the same natural rights philosophy he professed in the antebellum period. This further demonstrates that the best explanation of Douglass’s actions at this time is that prudence,

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26 See Frederick Douglass, *The Need for Continuing Anti-Slavery Work* (May 1865), in 4 *THE LIFE AND WRITINGS OF FREDERICK DOUGLASS: RECONSTRUCTION AND AFTER*, *supra* note 7, at 166, 166 (“I take this ground; whether this Constitutional Amendment [Thirteenth] is law or not, whether it has been ratified by a sufficient number of States to make it law or not, I hold that the work of Abolitionists is not done.”).

27 See *id.* at 167; Civil Rights Act of 1866, ch. 31, § 1, 14 Stat. 27, 27.

28 Douglass, *supra* note 26, at 167.

29 Douglass recounted the story of Samuel Hoar, a Massachusetts politician who was commissioned to South Carolina to challenge the state’s laws which prohibited free blacks from entering its borders. The law operated principally to seize black seamen, who were jailed and fined. If the blacks could not pay the fine, they would be sold into slavery to settle the debt. *Id.*; KATE MASUR, *UNTIL JUSTICE BE DONE: AMERICA’S FIRST CIVIL RIGHTS MOVEMENT, FROM THE REVOLUTION TO RECONSTRUCTION 177–79* (2021).

30 Douglass, *supra* note 26, at 167 (“Slavery is not abolished until the black man has the ballot.”).

31 See Frederick Douglass, *Change of Opinion Announced* (May 23, 1851), in 2 *THE LIFE AND WRITINGS OF FREDERICK DOUGLASS: PRE-CIVIL WAR DECADE 1850–1860*, *supra* note 4, at 155, 155.

which was an element in his theory (though at times almost imperceptible), came to the fore when Douglass was confronted by the conundrum of achieving justice for some or achieving it for none.<sup>32</sup>

### III. A TIME AND A SEASON FOR ALL THINGS: THE RISE OF EXPEDIENCY

Douglass displayed a depth of political wisdom in Reconstruction cultivated by more than two decades of abolitionist work.<sup>33</sup> At a time when many were doing victory laps within abolitionist circles, Douglass was sounding the liberty alarm—and for good reason. What may have seemed to be a mole hill in securing freedmen's liberty quickly revealed itself to be a mountain. It was clear, at least to Douglass, that the fight for liberty had only just begun with the ratification of the Thirteenth Amendment. This time, however, the battlelines were not roughly sketched along the Mason-Dixon Line. The foes existed in states loyal to the Union just as much as they did in the rebel states.

Political events across the Union helped to shape his views on this point. By early 1866, most if not all referenda across the northern states to introduce black suffrage had failed.<sup>34</sup> This certainly caused alarm among Douglass and other equal rights advocates. Just as the Civil War was drawing to a close and the fervor for freedom and equality had reached fever pitch, the opposition to black suffrage seemed as stark as ever. Notwithstanding this reality, it was personal experience that ultimately convinced Douglass something novel was needed to attain black suffrage.

#### A. *The Crucible of Political Experience: Meeting President Andrew Johnson*

In short order, Douglass had a personal encounter with the political spirit that resisted black elevation in the form of Andrew Johnson. Douglass, along with other prominent black leaders from across the country, met with President Johnson to discuss the future of blacks in the U.S.<sup>35</sup> George T. Downing, in an attempt to set the tone for the meeting, claimed that the black representatives were grateful for an audience with the president and that they felt as if they were “friends meeting a friend.”<sup>36</sup> Downing quickly got down to brass tacks, however, stating that the Thirteenth Amendment was insufficient and that the freedmen needed legislative action that would solidify their status

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32 See Rebeiro, *supra* note 11.

33 See *supra* notes 1–2.

34 See *supra* note 5.

35 Frederick Douglass, Interview with President Andrew Johnson, Washington, D.C., February 7, 1866, in 4 THE LIFE AND WRITINGS OF FREDERICK DOUGLASS: RECONSTRUCTION AND AFTER, *supra* note 7, at 182.

36 *Id.* at 183.

as citizens of the Union, eliminate race discrimination, and, most importantly, secure black enfranchisement.<sup>37</sup> Downing rounded out his overture with a Douglass-esque warning that “granting anything less than our full rights will be a disregard of our just rights and of due respect for our feelings.”<sup>38</sup>

Douglass succeeded Downing and, in uncharacteristically obsequious fashion, requested the President’s support in securing black suffrage. He reminded the President that the delegation was not there to “enlighten” him, but to show respect; “Divine Providence” had placed Johnson in a position where he could act as the savior of blacks, or otherwise bring about their demise.<sup>39</sup> He added his own request for the ballot but claimed to make no argument in its favor; the fact that, among other things, they were subjects of government, paid taxes, and fought in the war provided sufficient ground that they *ask* for the ballot. Blacks were not looking for handouts or to deprive other citizens of their rights. All they wanted was the right to vote; the rest they would entrust to time and the political process.<sup>40</sup>

Johnson’s response likely came as a shock. The President began his reply by claiming that he was a true friend of humanity and, by extension, of the recently enslaved.<sup>41</sup> But his response quickly turned to opprobrium:

For the colored race my means, my time, my all has been perilled [sic]; and now at this late day, after giving evidence that is tangible, that is practical, I am free to say to you that I do not like to be arraigned by some who can get up handsomely-rounded periods and deal in rhetoric, and talk about abstract ideas of liberty, who never perilled [sic] life, liberty, or property.<sup>42</sup>

Completely ignoring the contributions blacks had made in the latest war—not to mention the very real, daily peril to life, liberty, and property that slavery itself presented—Johnson summarily dismissed the natural rights claims that Douglass championed. Johnson was clear that, at least for the freedmen, natural rights claims had no weight in the matter at hand.

In Johnson’s approach we find a method that was more Machiavellian than Aristotelian in nature. Johnson argued that further legislation, especially legislation granting black suffrage, was not prudent. His position was founded on what he thought would achieve success in Reconstruction. He believed that giving blacks the right to vote was

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37 *See id.*

38 *Id.*

39 *Id.* at 184.

40 *Id.* at 183–84.

41 *Id.* at 184.

42 *Id.* at 185.

simply unwise. He chided the delegation, claiming that granting black suffrage would be harmful not only for white inhabitants of the South, but for blacks as well. The point of Reconstruction was to put an end to slavery, not rend the whole fabric of society. In this sense, Johnson was hoping for something closer to a *restoration* than a *reconstruction*.

Johnson claimed there were two principal causes for opposing slavery: first, it created an aristocracy in the South, with a master class over and above non-slaveholders;<sup>43</sup> second, freedom demanded it.<sup>44</sup> But it was clear that the latter cause, though important, was subordinate to the former. What mattered most were the political consequences of slavery, not abstract ideals that made it repulsive. With the Thirteenth Amendment, the master class of the South was deprived of its power, allowing whites to finally govern on an equal basis. Extinguishing the primary cause was sufficient to satisfy the second. To suddenly grant black suffrage, even if warranted at some future point in time, would upset the delicate peace won by the war. Natural rights and abstract principles of justice were irrelevant, as they were already resolved—chattel slavery was no more. Thus, when considering the plight of blacks in the South, Johnson was concerned more with how assisting freedmen might affect poor white southerners than with how to assist blacks in their newfound freedom. Johnson's own prudential calculation determined that a stable society could not be maintained while pursuing a radical civil rights agenda. The full measure of rights for blacks, who had been substantially served justice, could wait.

At this point Douglass tried to respond, but Johnson cut him off and continued his diagnosis of the problem.<sup>45</sup> Johnson explained that the problem was not simply a matter between the master and the slave; rather, it was one between the poor white man, the slave, and the master. There was an enmity between poor whites and slaves because slaves were the cause of poor whites' second-class status in the South. This hatred was exacerbated by the fact that those former slaves, now free, purportedly preferred to seek employment from southerners who previously owned slaves over those who did not. Douglass even conceded this point, remarking that blacks were likely to be treated better by former slaveowners. Johnson pounced on the concession, arguing: "It shows that the colored man appreciated the slave owner more highly than he did the man who didn't own slaves. Hence the enmity between

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43 *Id.* at 186. *See generally* FORREST A. NABORS, FROM OLIGARCHY TO REPUBLICANISM: THE GREAT TASK OF RECONSTRUCTION (2017).

44 Douglass, *supra* note 35, at 186.

45 *See id.* After Johnson's statement on the problem of slavery:

Mr. Douglass: Mr. President, do you wish—

The President: I am not quite through yet.

*Id.*

the colored man and the non-slaveholders.”<sup>46</sup> Johnson connected that enmity to voting, asserting that, should blacks be granted the right to vote, the interests of poor whites and blacks would continually be at odds, and that blacks would stand to suffer persecution not only from their former owners but from poor whites.<sup>47</sup> The war, according to Johnson, caused many deprivations for poor whites, who had no desire to protect the slave property of the master class. Further, the federal government already assisted the freedmen a great deal. In Johnson’s eyes, should more progressive reconstruction efforts continue, antebellum resentment of slaves was primed to become outright loathing of freedmen. Johnson believed the prudent thing to do was to forego black suffrage, for it would save blacks from unprecedented violence and oppression. Rather than impose another difficulty on an already impossible situation, Johnson suggested that the best solution was to simply allow every state to decide which of their citizens could and could not vote.<sup>48</sup>

Douglass again attempted a reply to Johnson’s arguments, but Johnson made it clear that he had no interest in discussion. As Douglass left the meeting he remarked, “The President sends us to the people, and we go to the people[,]” to which Johnson coldly replied: “Yes, sir; I have great faith in the people. I believe they will do what is right.”<sup>49</sup>

Douglass wasted no time going to the people. That same day, he and other black delegates sent a public response to Johnson. First, the delegation noted that Johnson’s assessment of the hostility between freedmen and poor whites was misguided. The delegation did not deny the existence of the hostility, but rather explained its true origins. The animosity stemmed from the existence of slavery; to impute that animosity upon a state of freedom would be illogical because the true source of the problem originated from the existence of *masters*, not the existence of slaves. Concerning slaves and poor whites, the masters effectively “divided both to conquer each.”<sup>50</sup> Blacks hated poor whites, for they made up the bulk of slave catchers and overseers. Without the

46 *Id.* at 187.

47 For instance, Johnson argued that if blacks were given the right to vote, they would probably be controlled in how they voted by their former masters. *See id.* at 191.

48 *Id.* at 188 (“Government commenced upon this principle; it has existed upon it; and you propose now to incorporate into it an element that didn’t exist before. I say the query comes up . . . whether we shall not let the people in that State decide the matter for themselves.”).

49 *Id.* at 191.

50 George T. Downing, John Jones, William Whipper, Frederick Douglass, Lewis H. Douglass, and Others, Reply of the Colored Delegation to the President (Feb. 1866), in 4 THE LIFE AND WRITINGS OF FREDERICK DOUGLASS: RECONSTRUCTION AND AFTER, *supra* note 7, at 191, 192.

need for such odious positions, blacks would have no reason to harbor ill will toward poor whites. Poor whites in turn hated blacks because poor whites were relegated to second-class citizenship due to their indigent status, which resulted from the inability to compete in a slave-driven market with only free labor resources. With no slaves, their labor would no longer be at a disadvantage. Thus, without masters, the source of hostility would naturally dissipate.

The delegation further reasoned that, if the animosity were not to cease, it became doubly expedient to grant blacks the right to vote. The delegation asked of Johnson, who professed to be the friend of blacks, “[H]ow can you, in view of your professed desire to promote the welfare of the black man, deprive him of all means of defence, and clothe him whom you regard as his enemy in the panoply of political power?”<sup>51</sup> If there truly were irresolvable tension between the races, and particularly between blacks and poor whites, then blacks needed a means to protect themselves. This sentiment echoed Douglass’s initial remarks to Johnson, where he said blacks simply wanted the vote for a means by which to “save ourselves.”<sup>52</sup> The delegation closed their arguments on that note: give blacks the vote and let them decide their own destiny. Markedly absent in the reply, however, was any appeal to natural rights or equality.<sup>53</sup>

This brief but heated exchange between Douglass and Johnson demonstrated the often-fraught nature of prudence in action. Though both seemed to have a holistic vision of what ought to be done to achieve justice and prosperity for the nation, each had a unique perception of what that looked like and how it was to be realized. Their altercation revealed the disparate outcomes of acting prudently with justice as the ultimate aim as opposed to security.

### B. *Self-Interest Over Justice*

By 1867, Douglass had formed a robust argument of expediency in favor of black suffrage. At this time Douglass was moving from natural rights argumentation to appeals based on practicality. Douglass wrote an article in *Atlantic Monthly* “appealing” to Congress for black suffrage, dedicating only a single paragraph in the article to natural rights argumentation. He argued that the right to vote was akin to

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51 *Id.* at 192–93.

52 Douglass, *supra* note 35, at 184.

53 *See generally* Douglass, *supra* note 50, at 192–93. That said, the closest the reply came to Douglass’s normal rhetoric of natural rights and equality was the delegation’s response to Johnson’s suggestion that blacks simply emigrate. To this, the delegation responded that the growing respect for blacks’ rights was a key part of the nation flourishing. But even then, the main thrust of the response was largely practical rather than theoretical.

other natural rights. “His [a black man’s] right to a participation in the production and operation of government,” Douglass claimed, “is in inference from his nature, as direct and self-evident as is his right to acquire property or education.”<sup>54</sup> Put simply, if the right to vote belonged to one, it belonged to all. However, black suffrage, Douglass argued, though easily supported theoretically, “demands consideration upon what are recognized as the urgent necessities of the case.”<sup>55</sup> Successful Reconstruction could only be accomplished if an end to all hostilities took place, which, according to Douglass, invariably stemmed from the problem of slavery. And the only way to end slavery was to grant black suffrage. But this consideration was one distinctly based on the exigencies of the time, not on those eternal principles that undergirded natural rights.

Douglass reasoned that, setting aside all claims of humanity, the calculated self-interest of Americans would lead them to instantiate black suffrage. In an overture bearing the unmistakable influence of Tocqueville,<sup>56</sup> Douglass called for the American people to consider the calculus of Reconstruction and the vast benefits of supporting black suffrage. Hoping this would lead Americans to the right decision, he stated: “[f]or in respect to this grand measure it is the good fortune of the negro that *enlightened selfishness*, not less than justice, fights on his side. National interest and national duty, if elsewhere separated, are firmly united here.”<sup>57</sup>

Douglass argued that it was in Americans’ interest to support black suffrage for four interwoven reasons. First, voting had an educative component to it; granting black suffrage would elevate the nation by elevating its most deprived citizens. A common counter to black suffrage was that blacks were too ignorant to vote.<sup>58</sup> Douglass did not contest this point—he was well aware that many blacks did not receive an adequate education, especially in the South.<sup>59</sup> But, again referencing human beings’ social nature, Douglass noted that the very ability to vote teaches people their true worth and spurs them to higher

54 Frederick Douglass, *An Appeal to Congress for Impartial Suffrage* (ATLANTIC MONTHLY, Jan. 1867, at 112–17), as reprinted in LASH, Vol. 2, *supra* note 17, at 323, 323.

55 *Id.*

56 See Douglass, *supra* note 22, at 269–70.

57 Douglass, *supra* note 54, at 325 (emphasis added).

58 See, e.g., Elizabeth Cady Stanton, Letter to the Editor, “*This Is the Negro’s Hour*,” National Anti-Slavery Standard (New York, NY) (NAT’L ANTI-SLAVERY STANDARD, Dec. 30, 1865, at 3), reprinted in LASH, Vol. 2, *supra* note 17, at 30, 30 (“In fact, it is better to be the slave of an educated white man, than of a degraded, ignorant black one.”).

59 See Douglass, *What the Black Man Wants*, *supra* note 8, at 161 (“I know that we are inferior to you in some things—virtually inferior. We walk about among you like dwarfs among giants.”).

heights.<sup>60</sup> Voting orients the individual to the regime, and the regime to the individual. The individual gains a sense of belonging but also feels the impulse to match the esteem that the political community displayed in him or her through conferring an equal say in governance. This creates a strong incentive to *become* educated—both as to things pertaining to the political question at hand and as to general matters. When people vote, they want to know what they are voting *for* so that they may more properly act according to their individual interest and the common good. Thus, there is a distinctive psychological component to voting that makes universal suffrage not only right, but practical. Second, building on the first, not granting voting rights would have the reverse effect—it would degrade blacks, who were already in a state of virtual, though not natural, inferiority. Blacks would then lack an important incentive to aspire for more, to elevate themselves as a people. Such a result would be impractical, as weak citizens are of no use to the regime.<sup>61</sup>

Third, similar to the war effort, the nation's (or from southerners' perspective, it might be more accurate to say "the North's") interests were better served with blacks' support.<sup>62</sup> Beyond refining those interests to *Northern* interests, however, we might refine them more definitively as *Republican* interests. It is here that we find Douglass showcasing adroit political maneuvering. He began by connecting black support to national interests. The nation's primary task in Reconstruction was to solidify the Union—a task that could be done only by putting an end to the rebel cause in all its forms. Rebel states already proved early on in Reconstruction that, even as they capitulated to northern demands, they would do whatever they could to preserve their peculiar institutions. Black codes were making a mockery of the Thirteenth Amendment, and there was little sign of any actual change in condition for freedmen. For Douglass, the present conundrum was no different than the war. Black liberation was key to the nation's success. For example, Douglass believed the tide of the war did not firmly turn in

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60 Douglass, *supra* note 54, at 325 ("Exclude the negroes as a class from political rights . . . and you at once deprive them of one of the main incentives to manly character and patriotic devotion to the interests of the government; in a word, you stamp them as a degraded caste, you teach them to despise themselves, and all others to despise them. Men are so constituted that they largely derive their ideas of their abilities and their possibilities from the settled judgments of their fellow-men, and especially from such as they read in the institutions under which they live.")

61 *See id.* ("But this mark of inferiority . . . not only dooms the negro to be a vagabond, but makes him the prey of insult and outrage everywhere. While nothing may be urged here as to the past services of the negro, it is quite within the line of this appeal to remind the nation of the possibility that a time may come when the services of the negro may be a second time required.")

62 *Id.*

favor of the North until the North permitted blacks to enlist. The North foolishly insisted, Douglass argued, on fighting with the right hand when its left was tied behind its back.<sup>63</sup> Now, in Reconstruction, the North risked making the same mistake. Northern efforts to secure the actual freedom of blacks in the South would experience little success without black assistance. “Strong as we are,” Douglass reflected, “we need the energy that slumbers in the black man’s arm to make us stronger.”<sup>64</sup> But Douglass importantly hinted that black assistance would decidedly favor the Republican Party, which at that time enjoyed a comfortable majority in Congress. And Republicans would need black assistance moving forward. Douglass speculated that, to date, the theretofore prideful rebel states had acquiesced to all manner of humiliation in the form of unconstitutional test oaths, degrading assumptions of debt, and forced amendment adopting for one purpose:

Once firmly seated in Congress, their alliance with Northern *Democrats* reestablished, their States restored to their former position inside the Union, they can easily find means of keeping the Federal government entirely too busy with other important matters to pay much attention to the local affairs of the Southern States. Under the potent shield of State Rights, the game would be in their own hands.<sup>65</sup>

Douglass suspected that, so long as they could keep blacks from voting, the rebel states would generally acquiesce to all that the Republican Congress would demand of them. They were playing the long game—if they could have firm control over the ballot, they could undo everything the North accomplished during Reconstruction.

Douglass further appealed to Northern fears in his final rationale: just as they experienced in the antebellum period, northerners’ own institutions would be threatened by the unmitigated abridgement of black rights in the South. Tensions between the North and South in the antebellum period increased as northerners noticed their *own* rights being infringed upon. Among the violations was the disregarding of the Privileges and Immunities Clause, such as jailing free black northerners who crossed their borders and the abridging of free speech rights, as abolitionist pamphlets and other circulations were banned in the South.<sup>66</sup> Douglass argued that the South in the antebellum period “early mastered the Constitution, became superior to the

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63 See Douglass, *The Proclamation and a Negro Army* (Feb. 1863), in 3 *THE LETTERS AND WRITINGS OF FREDERICK DOUGLASS: CIVIL WAR 1861–1865*, at 321, 322 (Philip S. Foner ed., 1952).

64 Douglass, *supra* note 54, at 325.

65 *Id.* at 326 (emphasis added).

66 See MASUR, *supra* note 29, at 177–79 (discussing the contention surrounding privileges and immunities). For an example of how southern states acted to restrict the speech

Union, and enthroned itself above the law.”<sup>67</sup> The North needed to be watchful, he warned, for the same “evil principle again seeks admission into our body politic.”<sup>68</sup> The North had an opportunity to set right the mistakes of the past. Northerners already suffered the mistake of the Founders, who thought the Union’s grander principles would eventually overcome the practices of the South. If they failed to act now, northerners risked making the same mistake for future generations.<sup>69</sup>

#### IV. THEORY AND PRACTICE IN OPEN CONFLICT: BLACK V. WOMEN SUFFRAGE

Nothing displayed the tension between Douglass’s theory and his practice quite as acutely as his confrontation with women during Reconstruction. In the antebellum period, Douglass was a faithful advocate of equal rights for women. Even as he fought for slaves’ freedom, he never missed an opportunity to assist women’s efforts for equal rights.<sup>70</sup> Though the condition of the slave objectively was more grievous than the woman’s, Douglass believed that both claims rested on the same natural rights principles. Equal and exact justice would require government to grant women equal status as citizens through equal natural, civil, and political rights. But as the war came to a close and the demands of the time required theory to be put into practice, Douglass settled upon the assertion that the claims of blacks and the claims of women did not rest entirely on the same basis after all. In many ways, his hand was forced in this regard. Without impediments, he would have wanted the suffrage question *definitively* answered by the Fifteenth Amendment. Nevertheless, Douglass chose to do what was necessary to at least ensure there *would be* a Fifteenth Amendment. There were two possible, non-mutually-exclusive reasons for Douglass’s shift: first, he truly believed that blacks and women were not similarly situated in the Union—the dire situation for blacks had an immediacy

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of northern abolitionists within southern borders, see North Carolina, *An Act to Prevent the Circulation of Seditious Publications* (1830), in LASH, Vol. 1, *supra* note 8, at 207, 207.

67 Douglass, *supra* note 54, at 327.

68 *Id.*

69 *Id.* (“Statesmen, beware what you do. The destiny of unborn and unnumbered generations is in your hands. Will you repeat the mistake of your fathers, who sinned ignorantly? . . . As you members of the Thirty-ninth Congress decide, will the country be peaceful, united, and happy, or troubled, divided, and miserable.”).

70 Douglass was in constant correspondence with pivotal women’s rights leaders of the antebellum period. The sense was that their goals were fundamentally intertwined and therefore shared the same cause and struggle. See, e.g., Douglass, To Elizabeth Cady Stanton (Aug. 1860), in 2 THE LIFE AND WRITINGS OF FREDERICK DOUGLASS: PRE-CIVIL WAR DECADE 1850–1860, *supra* note 4, at 497.

that women simply did not. Second, a subtler possibility was that he refused to sacrifice what was politically possible and necessary for what was politically doubtful, though just in the fullest sense.<sup>71</sup>

Early on in Reconstruction, Douglass showed hesitancy regarding women's voting rights. As early as 1865, he made his separate-claims argument concerning women and blacks.<sup>72</sup> Not long thereafter, Douglass more clearly severed the women's movement from that of blacks, likely due to political events. Congress, in the midst of efforts to pass the Civil Rights Bill of 1866 and the Fourteenth Amendment, entertained the question of women's voting rights. At that time, Congress considered Stanton and Anthony's petition for women's suffrage.<sup>73</sup> Stanton and Anthony, close allies of Douglass in the antebellum period, hoped that if Congress were opening the door to suffrage, women would be allowed in. Representative James Brooks, a Democrat from New York, introduced the petition, which Republican Representative Thaddeus Stevens of Pennsylvania, a long-time advocate of black suffrage, notably elected to ignore. Brooks contested the Apportionment Amendment, which would later become Section Two of the Fourteenth Amendment, on several grounds, all stemming from its lack of inclusivity.<sup>74</sup> Brooks pointed out that the point of the Apportionment Amendment was to coerce states into granting black suffrage and, that being the case, he preferred "the white women of my country to the negro."<sup>75</sup> Brooks effectively wielded women's suffrage as a weapon against efforts to enfranchise blacks, seeking to sabotage Republican efforts by highlighting the inconsistency of their principles.

The Brooks incident manifested the greater tension between Republicans and Democrats that bled into the black suffrage and women's suffrage movements. Several Democrats had taken up the

71 At that point in time Douglass's sentiment was not shared by all, let alone women. Wendell Phillips, for example, remained a central figure in the struggle for equal rights, but he did not hedge on the question of voting in 1866. See Wendell Phillips, *Speech of Wendell Phillips on the Fourteenth Amendment, Cooper Institute, CINCINNATI COMMERCIAL*, Oct. 25, 1866, at 55, as reprinted in LASH, Vol. 2, *supra* note 17, at 277, 278 ("Yes, the timid and cowardly policy of a party bound only upon its own perpetuation undertakes to engraft into that Constitution the word 'male,' confining us, in the onward march of the suffrage question, to one sex. I repudiate all limitations.").

72 See Douglass, *What the Black Man Wants*, *supra* note 8, at 161.

73 See CONG. GLOBE, 39th Cong., 1st Sess., 376–89 (1866) (statement of Rep. Brooks), as reprinted in LASH, Vol. 2, *supra* note 17, at 47, 50.

74 See *id.* at 49. It is doubtful that Brooks held any genuine concerns for any of these groups he believed were "wrongfully" excluded. Brooks never saw the opportunity to vote on the Fourteenth Amendment because he was replaced by his opponent, William Dodge (who later voted in favor of the amendment). BIOGRAPHICAL DIRECTORY OF THE U.S. CONG., 170–73 (2005), as reprinted in LASH, Vol. 2, *supra* note 17, at 14, 17 n.27.

75 CONG. GLOBE, 39th Cong., 1st Sess. 376–89 (1866) (statement of Rep. Brooks), as reprinted in LASH, Vol. 2, *supra* note 17, at 47, 50.

cause for women's suffrage, which women leaders, including Stanton, gladly welcomed. Douglass, however, was convinced that such efforts were, like Brooks' political tactics, only a guise for *opposing* black suffrage.<sup>76</sup> At an equal rights convention in 1866, Douglass characterized Democratic efforts to support women's suffrage as "the trick of an enemy to assail and endanger the rights of black men."<sup>77</sup> The point was to defeat Republican efforts to secure black suffrage, not to achieve women's suffrage. This point of contention between Republicans and Democrats, black suffrage and women's suffrage, Douglass and women leaders, came up periodically throughout Reconstruction.<sup>78</sup> But, at least in the early years, Douglass and women's rights advocates were still able to find enough common ground not to be in open conflict.

Nevertheless, the slow rift continued. At that same 1866 equal rights convention, Douglass again subtly separated the women's movement from that of blacks.<sup>79</sup> Following Anthony's reminder that the convention's purpose was to advocate for "equal suffrage and equal rights for all," Douglass, though not scheduled to speak, answered the call to take the stage.<sup>80</sup> He noted the government's failure for not granting women political rights; in fact, he encouraged women's suffrage *if* it meant that women would help accelerate the cause of black suffrage. But Douglass believed the convention to be a "Woman's Rights Convention," not an "Equal Rights Convention."<sup>81</sup> The causes, though similar, were fundamentally different. For Douglass, equal rights were important for women, but equal rights were indispensable for blacks. Some time later, in a letter declining the opportunity to speak on behalf of women's suffrage, Douglass stated: "I am now devoting myself to a cause not more sacred, certainly more urgent, because it is life and death to the long-enslaved people of this country;

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76 See Frederick Douglass, *Let No One Be Excluded from the Ballot Box: An Address Delivered in Albany, New York (Nov. 20, 1866)*, 4 THE FREDERICK DOUGLASS PAPERS: SERIES ONE: SPEECHES, DEBATES, AND INTERVIEWS, 1864–80, at 146, 148 n.3 (John W. Blassingame & John R. McKivigan eds., 1991).

77 *Id.*

78 See, e.g., Douglass, *Equal Rights for All: Addresses Delivered in New York, New York (Evening Session, May 1868)*, in 4 THE FREDERICK DOUGLASS PAPERS: SERIES ONE: SPEECHES, DEBATES, AND INTERVIEWS, *supra* note 76, at 172, 178 (dispute between Douglass and Olympia regarding the issues presented by women supporting the Democratic Party).

79 See *The Equal Rights Convention, Remarks of Susan B. Anthony, Elizabeth Cady Stanton, and Frederick Douglass, Albany NY*, N.Y. TIMES, Nov. 21, 1866, at 8, as reprinted in LASH, Vol. 2, *supra* note 17, at 304, 304.

80 *Id.*

81 *Id.*

and this is: Negro suffrage.”<sup>82</sup> Women’s voting might have been a question of fairness, but blacks’ voting was a matter of life and death. It was not lost on Douglass that simultaneously fielding the cause of women and the cause of blacks had previously produced unsavory results, and he was not going to let the chance for blacks’ civil emancipation slip out of his hands.

Women leaders also gradually embraced the divorce between the causes as political realities pressed and constrained the theoretical premises of what *ought* to be. In 1865, Stanton expressed some concern over Wendell Phillips’ remarks that “this hour belongs exclusively to the negro.”<sup>83</sup> Stanton held some reservation over whether women made the right choice in advocating for black suffrage if those freedmen would only become oppressors. How could women be sure that black men would be any more beneficent toward them than white men had? Stanton contemplated that if black men were to abandon women in their time of need, women’s situation would be even worse than before, as their oppressors would have multiplied—not just white men, but black men would exercise dominion over them, and Stanton opined that being under the rule of blacks was simply unbearable.<sup>84</sup> Stanton believed her worst fears on this point became reality when, with the Fifteenth Amendment just weeks away from passing both chambers without a trace of protection for women’s suffrage, black leader George T. Downing claimed that nature intended that “the male should dominate over the female everywhere.”<sup>85</sup> Stanton was convinced that blacks, once enfranchised, would not assist women. Though the general rule was that any advancement toward liberty and equality was good, the Fifteenth Amendment would make “her [women’s] degradation more complete in the transition period.”<sup>86</sup> For this reason, Stanton called on public and political leaders everywhere in the Union to oppose the amendment.

82 Frederick Douglass, To Josephine Sophie White Griffing (Sept. 1868), in 4 *The LIFE AND WRITINGS OF FREDERICK DOUGLASS: RECONSTRUCTION AND AFTER*, *supra* note 7, at 212, 212.

83 Stanton, *supra* note 58, at 30; “*This Hour Belongs Exclusively to the Negro*,” *Speeches at the Thirty-Second Anniversary of the American Anti-Slavery Society*, N.Y. TIMES, May 10, 1865, at 1, as reprinted in LASH, Vol. 1, *supra* note 8, at 537, 539 (“I hope some day [sic] to be bold enough to add ‘sex.’ However, my friends, we must take up but one question at a time, and this hour belongs exclusively to the negro.”).

84 Stanton, *supra* note 58, at 30 (“In fact, it is better to be the slave of an educated white man, than of a degraded, ignorant black one.”).

85 Elizabeth Cady Stanton, *Women and Black Men*, REVOLUTION, Feb. 11, 1869, at 88, as reprinted in LASH, Vol. 2, *supra* note 17, at 527, 527.

86 *Id.* at 528.

## V. FIFTEENTH AMENDMENT

Douglass's incessant advocacy for black suffrage saw dividends by 1868, when General Ulysses S. Grant was nominated at the Republican National Convention on a platform that included the call for equal suffrage.<sup>87</sup> By this time, two favorable developments helped carve the path for black suffrage. Blacks in Washington, D.C. gained voting rights in 1867 over the objections of President Johnson, and Republicans granted blacks suffrage in the reconstruction process of rebel states.<sup>88</sup> Though these were local and temporary concessions, respectively, Douglass found them to be the opportunities needed to demonstrate the usefulness of black suffrage to the Republican cause. Douglass believed that blacks proved their worth when a substantial portion voted for Grant, helping ensure Republican control.<sup>89</sup> There is a possibility that this fact alone helped reorient congressmen's attitude toward equal suffrage. Though it is unclear what caused the change, the one certainty is that the Fortieth Congress, unlike the Thirty-Ninth, was preoccupied with securing for blacks the most controversial of discretionary rights: suffrage. After midnight concessions and compromises, the Fortieth Congress was able to pass the Fifteenth Amendment and send it to the states for ratification. It was here that the tension Douglass had sought to keep at bay finally burst forth.

A. *Ratification*

Ratification faced several obstacles.<sup>90</sup> But the question of equal rights and women occupied Douglass's attention most, despite his best efforts to avoid it. He was forced to argue against his former allies and, ultimately, against his own principles.

In the midst of ratification, the conflict between Douglass and certain women leaders came to a head. Leading up to ratification, some black leaders chose to emphasize manliness of voting in their efforts to promote black male suffrage, a tactic Douglass avoided. Some women leaders responded in kind, noting the imminent danger posed to

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87 Foner, *supra* note 7, at 35.

88 ERIC FONER, RECONSTRUCTION: AMERICA'S UNFINISHED REVOLUTION, 1863–1877, at 272–77 (1988); see Military Reconstruction Acts (Act of Mar. 2, 1867, ch. 153, 14 Stat. 428; Act of Mar. 23, 1867, ch. 6, 15 Stat. 2; Act of July 19, 1867, ch. 30, 15 Stat. 14; Act of Mar. 11, 1868, ch. 25, 15 Stat. 41).

89 See Foner, *supra* note 7, at 37–38 (Foner commentary).

90 See INTRODUCTION TO PART 2B, LASH, Vol. 2, *supra* note 17, at 541, 541–46 (discussing problems with Fifteenth Amendment ratification tied to the Requirement Bill, Georgia, New York, and Indiana); see also Travis Crum, *The Lawfulness of the Fifteenth Amendment*, 97 NOTRE DAME L. REV. 1543, 1563–94 (2022).

women if blacks were granted the right to vote.<sup>91</sup> Friction between these two factions escalated to open conflict when leaders for black suffrage and women's suffrage clashed when the American Equal Rights Association convened in mid-May of 1869 with many in attendance, including Douglass, Anthony, and, acting as chair, Stanton.

Stanton opened the meeting amicably with a complaint acceptable to all in attendance: the United States to date had failed to implement a true republic, settling instead for an aristocracy of color and of sex. Until women received the vote, the U.S. would remain only a shadow of its full potential. The women's rights movement would help the U.S. realize its full potential and was therefore a "great patriotic movement."<sup>92</sup> The amicable atmosphere devolved quickly, however, when an attendant questioned the allegiance of women leaders to a New York feminist paper, *The Revolution*, which adopted the stance of "Educated Suffrage." Given that one of the more popular arguments against black suffrage was the purported ignorance of blacks, such a motto made clear where the paper stood on black suffrage. The slogan also echoed sentiments expressed by Stanton early on in Reconstruction that it was better for women to be subject to the rule of an "educated white man, than of a degraded, ignorant black one."<sup>93</sup> Later in the meeting Anthony confirmed this sentiment, stating: "But we say that if you will not give the whole loaf of justice and suffrage to an entire people, give it to the most intelligent first."<sup>94</sup> As noted earlier, women at this time were very concerned that, should they help blacks get the vote without taking advantage of the opportunity to secure the vote for themselves, they would multiply their oppressors, providing the very tools of oppression. Regardless of whether the sentiment was well-founded, its logic was not lost on Douglass, who a couple of years earlier had analogized the story of the fox and the goat to a similar situation blacks faced with southern loyalists—both stuck in a well, the

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91 As will be discussed below, some of Douglass's closest women allies, most notably Elizabeth Cady Stanton and Susan B. Anthony, took this line of argument. However, there were other prominent women leaders, such as Lucy Stone and Julia Howe, who remained open to the prospect of black suffrage in late Reconstruction. See ELLEN CAROL DUBOIS, *SUFFRAGE: WOMEN'S LONG BATTLE FOR THE VOTE* 40–51 (2020). Frances Ellen Watkins Harper, a black woman suffragist, is particularly notable in that her methods for advocating black suffrage closely mirrored Douglass's. She called for black male suffrage while neither rejecting nor endorsing women's suffrage—she simply set the women's suffrage question aside. See FAYE E. DUDDEN, *FIGHTING CHANCE: THE STRUGGLE OVER WOMAN SUFFRAGE AND BLACK SUFFRAGE IN RECONSTRUCTION AMERICA* 161–86 (2011).

92 *Annual Meeting of the Equal Rights Association, Remarks of Stephen Foster, Elizabeth Cady Stanton, and Frederick Douglass, New York, NY, REVOLUTION*, May 20, 1869, at 1–2, as reprinted in LASH, Vol. 2, *supra* note 17, at 570, 571 [hereinafter *ERA Meeting*].

93 Stanton, *supra* note 58, at 30.

94 *ERA Meeting, supra* note 92, at 572.

goat aids the fox using its horns on the promise that the fox will turn to assist the goat once free, but the fox forgets the goat as soon as it is free.<sup>95</sup>

Though Douglass did not intend to speak at the meeting, he could not stand idly by and avoid confronting what he saw as a major hurdle to support for black suffrage. The sentiments expressed in *The Revolution* and the subtle antagonism to black suffrage that Stanton and Anthony entertained simply could not be ignored. Douglass stated firmly and succinctly what he had mostly alluded to up to that point: “I must say that I do not see how any one can pretend that there is the same urgency in giving the ballot to women as to the negro. With us, the matter is a question of life and death. It is a matter of existence, at least, in fifteen States of the Union.”<sup>96</sup> Blacks in the South were being hunted down, taken from their families, and denied basic public goods such as schooling, while their homes were capriciously destroyed. In short, blacks did not have the security of life, liberty, or property. Douglass made this point even clearer when asked if all that was not true of black women: “Yes, yes, yes, it is true of the black woman, but not because she is a woman but because she is *black*.”<sup>97</sup> Douglass closed by proposing that women’s suffrage be pursued *after* black suffrage was secured. The women leaders, understandably, did not take kindly to the proposal. Anthony responded to Douglass’s proposal with derision, stating emphatically, “we are in for a fight today.”<sup>98</sup>

Douglass’s confrontation with Stanton and Anthony most clearly revealed the role of prudence in his theory. Douglass, the man who had developed a robust constitutional theory based on natural rights principles—principles he believed to be true and eternal—had driven a wedge between the rights claims of women and blacks. At this time, Douglass might be said to have experienced his “Lincoln” moment. He had been quite critical of President Lincoln for being the “white man’s president,” but nevertheless granted him all the latitude he needed to achieve justice for the enslaved.<sup>99</sup> Lincoln believed in the natural right of the slave to life, liberty, and property.<sup>100</sup> Yet in the

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95 See Douglass, *supra* note 22, at 270. In this allegory, the goat represented southern blacks who helped southern loyalists, the fox, form new constitutions that would operate to the advantage of those loyal to the Union.

96 *ERA Meeting*, *supra* note 92, at 570–71.

97 *Id.* at 572 (emphasis added).

98 *Id.*

99 See Frederick Douglass, Oration in Memory of Abraham Lincoln (Apr. 14, 1876), in 4 THE LIFE AND WRITINGS OF FREDERICK DOUGLASS: RECONSTRUCTION AND AFTER, *supra* note 7, at 309, 312.

100 Perhaps the most direct exposition of this principle by Lincoln came in the Lincoln-Douglas debates in 1858. See 3 ABRAHAM LINCOLN, THE COLLECTED WORKS OF ABRAHAM

antebellum period, Lincoln often, to Douglass's indignation, acted in ways that seemed to *preserve* the chains of the slave.<sup>101</sup> Douglass didn't pull any punches in his attacks on Lincoln during that time, but in 1876, Douglass suggested that Lincoln acted *prudently* in his efforts to free the slave. Thus, though the former President might not have done everything in the exact way and in the exact time that Douglass would have hoped, he recognized that Lincoln was "swift, zealous, radical, and determined" in saving the Union, as well as the slave.<sup>102</sup> Lincoln achieved the politically possible in his particular context. Douglass may have developed this revised view of Lincoln after discerning his own situation in the same way. Natural rights and equality required all to have political rights, but the political exigencies of the time made it clear (at least to Douglass) that the plight of blacks needed to be addressed before anything else. In this case, the Constitution need only *bend* toward justice, not achieve it completely.

On March 30, 1870, President Grant announced to Congress the ratification of the Fifteenth Amendment.<sup>103</sup> Speaking of the gravity of the event, Douglass stated:

Henceforth we live in a new world, breathe a new atmosphere, have a new earth beneath and a new sky above us. . . . Equal before the Lord, equal at the ballot box and in the jury box, the glory or shame of our future condition is to fall upon ourselves. . . . To-day [sic] we

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LINCOLN 315 (Roy P. Basler ed., 1953) ("It is the eternal struggle between these two principles—right and wrong—throughout the world. They are the two principles that have stood face to face from the beginning of time; and will ever continue to struggle. The one is the common right of humanity and the other the divine right of kings. It is the same principle in whatever shape it develops itself. It is the same spirit that says, 'You work and toil and earn bread, and I'll eat it.' . . . No matter in what shape it comes, whether from the mouth of a king who seeks to bestride the people of his own nation and live by the fruit of their labor, or from one race of men as an apology for enslaving another race, it is the same tyrannical principle.").

101 For instance, early in the Civil War General Fremont issued an order to free all slaves captured during conflict in Missouri. But Lincoln's administration saw to it that Fremont's order was reversed and disavowed, much to the chagrin of Douglass and other abolitionists. See Frederick Douglass, *Fremont and Freedom—Lincoln and Slavery*, in 3 *THE LIFE AND WRITINGS OF FREDERICK DOUGLASS: THE CIVIL WAR 1861–1864*, *supra* note 63, at 174, 175.

102 Douglass, *supra* note 99, at 316. Notably, Douglass made these observations *after* his experiences as a political and constitutional actor during Reconstruction. There is a strong possibility that those experiences in Reconstruction helped shape his final view of Lincoln expressed in 1876.

103 See CONG. GLOBE, 41st Cong., 2nd Sess. 2289–90 (1870), as reprinted in LASH, Vol. 2, *supra* note 17, at 595, 595.

survey a future radiant with light and hope. *We were always men—now we are citizens and men among men.*<sup>104</sup>

The long-awaited day when blacks could have a home—or at least the hope of a home—had finally come. They were now *unassailably* citizens as well as men in the eyes of the Constitution. Now was the time for a new beginning, an opportunity for the nation to realize its full potential. These words, of course, may seem glib coming from a man who ostensibly abandoned his principles at a crucial time of constitutional reform. But, unlike the fox who left the goat stranded, Douglass returned to his natural rights constitutionalism in full force after the passing of the Fifteenth Amendment. Douglass reunited the cause of women and blacks as he pursued suffrage for the former and protection for the latter.

### B. *Post-Ratification Return to Natural Rights*

Douglass's actions post-ratification prove that he did not change his principles or his theory despite his actions leading up to the Fifteenth Amendment. Douglass still had his eye on Congress, urging efforts to finish what the amendments had started: guaranteeing the natural rights of blacks. After all, government had a two-fold mission: not to violate the natural rights of citizens and to protect those rights from others who might seek to infringe them.<sup>105</sup> Post-ratification Douglass continued to press Congress to enforce the Reconstruction Amendments by providing adequate legislation to protect blacks in their rights.<sup>106</sup> That said, a great deal of his time following the Fifteenth Amendment's ratification was devoted to women. The ink had barely dried on the Fifteenth Amendment before Douglass returned to his calls for reform, this time in favor of women.<sup>107</sup> In his defense of women's suffrage, Douglass again deployed natural-rights-based arguments to demonstrate that no republic was legitimate that denied its women citizens the right to vote.

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104 Frederick Douglass, *Letter to a Ratification Celebration*, CINCINNATI COM. TRIB., Apr. 15, 1870, at 3, as reprinted in LASH, Vol. 2, *supra* note 17, at 597, 597.

105 See, e.g., Douglass, *supra* note 101, at 296 (applauding Congress's passing of the Enforcement Act) ("Of what value is this Government if it does not protect its citizens in the exercise of those rights which distinguish it from tyrannical and monarchical governments."). Just a few years after these statements the Supreme Court invalidated the Enforcement Act as an unconstitutional attempt to confer the right of suffrage. See *United States v. Reese*, 92 U.S. 214 (1875).

106 See Frederick Douglass, *Why is the Negro Lynched?*, in 4 THE LIFE AND WRITINGS OF FREDERICK DOUGLASS: RECONSTRUCTION AND AFTER, *supra* note 7, at 491, 520.

107 See, e.g., Frederick Douglass, *Woman Suffrage Movement*, in 4 THE LIFE AND WRITINGS OF FREDERICK DOUGLASS: RECONSTRUCTION AND AFTER, *supra* note 7, at 231, 231.

Douglass delineated his natural rights theory, this time to demonstrate how women were included in its contours. Natural rights, Douglass argued, were founded on two premises. First, human beings were admitted to be “moral and intellectual,” having the ability to discern between good and evil coupled with the power to choose between the two. These were human beings’ “natural powers.”<sup>108</sup> Second, these natural powers provided the foundation for natural rights, which were properly possessed by human beings so long as they were conscious of their natural powers. If a human being was self-aware, conceiving of moral choices and the power to make them, then that human being was the proper possessor of natural rights. All persons who possessed these natural rights were in turn equal because of their natural powers. Finally, as described earlier, possessing natural rights required self-government as a rule, requiring government to be based on consent.

Once government was established, the most important requisite for voting was allegiance.<sup>109</sup> When the natural-rights-bearing individual consented to a form of government based on universal suffrage (such as a republican form of government), the natural equality of all persons required political rights to be distributed on an equal basis. Voting could be denied to some, it was true, but the grounds for doing so were limited.<sup>110</sup> In a republic it was not sufficient to be governed by others, no matter how benevolent the rule. “A despotism,” Douglass argued, “is no less a despotism because the reigning despot may be a wise and good man.”<sup>111</sup> To be under the rule of another was akin to political slavery. Douglass compared the situation of women to that of slaves in this regard. Even when the slave had a “kind and tender hearted” master, it did not change the unjust condition of that slave.<sup>112</sup> To avoid the mistakes of the antebellum republic and instead finally

108 *Id.* at 232.

109 *Id.* at 231–32 (“Now we know of no truth more easily made appreciable to human thought than the right of woman to vote, or, in other words, to have a voice in the Government under which she lives and to which she owes allegiance. The very admission that woman owes allegiance, implies her right to vote.”).

110 *Id.* at 233 (“Unless it can be shown that woman is morally, physically, and intellectually incapable of performing the act of voting, there can be no natural prohibition of such action on her part.”). These prohibitions may be seen as directly tied to the natural powers question. If an individual is found, for some extraordinary reason, to not possess natural powers inherent in human beings, then government could restrict that person’s voting rights. Of all the prohibitions, the intellectual-based prohibition likely presented the most trouble for Douglass. It was on this basis, after all, that most (even women!) opposed black suffrage. Douglass likely would have assented to prohibiting children, for example, from voting because of a lack of maturity or intellectual growth. But he was insistent that voting restrictions based on education were illegitimate, given that voting *itself* was educative. See Douglass, *supra* note 106, at 509; Douglass, *What the Black Man Wants*, *supra* note 8, at 162.

111 Douglass, *supra* note 107, at 232.

112 *Id.*

actualize the true natural-rights-based republic, there was only one legitimate response to the plight of the woman: “Let her represent herself.”<sup>113</sup>

### CONCLUSION

Exploring Douglass’s actions during Reconstruction provides an intriguing example of how constitutional and political actors may, at times, need to act in ways that are not perfectly consistent with their theories.

A close examination of Douglass’s advocacy for political rights, as well as his full return to natural rights theory post-Reconstruction Amendments, reveals that Douglass did not suddenly change his theory; rather, he sacrificed the theoretical for the politically *necessary*. He came to see clearly that a declaration of rights alone did not serve to secure them, and that dependence on others to do so was to trust to fortune. Douglass’s sense on this issue was that, should blacks be granted suffrage, other rights would take care of themselves. Douglass had the perspicacity to recognize that suffrage was the only means of securing rights so hard-fought, making it the most vital—and the most endangered—right for blacks in Reconstruction. Given the hesitancy of Republicans in early Reconstruction on the issue of political rights, Douglass acted prudently in switching his line of argumentation from theoretical claims of natural rights to practical claims of northern advantage and self-interest. This shift could be seen most prominently in his confrontation with women leaders, who were close allies in the antebellum anti-slavery movement. Once friends, Douglass and women leaders (though briefly) became bitter rivals just as the question of black suffrage reached its apex. Women leaders sided with Northern Democrats who took up the women’s suffrage cause but actively opposed black suffrage. Douglass responded by seeking to table the women’s suffrage question. There was little political force behind extending suffrage, and yet political exigencies made black suffrage a matter of life and death; pushing for women’s suffrage at that time would have killed what was already a precarious opportunity for blacks. At this time, the nation simply needed to *bend* toward justice, not fully achieve it.

But Douglass did not simply forsake the “ought” for the “is.” Douglass’s prudence could be characterized as Aristotelian in nature because he had a vision of what was just, and he pursued a program that could be *actually* achieved, while eschewing just principles only to

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113 Frederick Douglass, *Woman and the Ballot*, in 4 *THE LIFE AND WRITINGS OF FREDERICK DOUGLASS: RECONSTRUCTION AND AFTER*, *supra* note 7, at 235, 238.

the extent that was absolutely necessary to achieve the politically possible. That Douglass always had a fuller conception of justice guiding his actions was further demonstrated by his actions post-ratification of the Fifteenth Amendment. Douglass used the full extent of his natural rights theory to make the case for women's suffrage. In perhaps his most succinct exposition on the subject, Douglass argued that the natural powers inherent in all human beings led to equal natural rights, and these rights required republics to grant suffrage to all on an equal basis. Any arrangement to the contrary constituted political slavery, an arrangement a natural-rights-based republic could not abide. But Douglass did not marshal forth these arguments until he believed that theory and practice could at last come together to form a harmonious political program. After the ratification of the Fifteenth Amendment, it was finally time, Douglass argued, for the nation to realize the principles upon which it was founded.

